SUPREME COURT OF THE UNITED STATES.

No. ~~269~~. 184.

JAMES SINGLETON AND AL., Plaintiff in Error,

v.

GUSTAVE TOUCHARD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

G. S. GIDEON, Printer, No. 511 Ninth Street, Washington, D. C.

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United States of America, Northern District of California.

Pleas before the judges of the Circuit Court of the United States for the Districts of California, in and for the Northern District, at the court-house in the city of San Francisco, on Monday the second day of January of the January term, in the year of our Lord one thousand eight hundred and sixty.

Witness the Honorable M. Hall McAllister, judge of said court, and the Honorable Ogden Hoffman, U. S. District Judge for Northern District of California, *ss.*

Be it remembered, that at the January term, in the year of our Lord one thousand eight hundred and sixty, before the Honorable M. Hall McAllister, judge of the Circuit Court of the United States for the Districts of California, and the Honorable Ogden Hoffman, U. S. District Judge, at the court-house in the city of San Francisco, came Gustave Touchard by Saunders and Campbell and Hall McAllister, his attorneys, and brought into said court before the aforesaid judges thereof, his certain bill, complaint, or declaration against James Singleton, Daniel McCrea, William Quin, John Cottrell, John Tolley, Oliver Farnsworth, Robert Thompson, Joseph Aubrey, Mickle McWelch, Peter McChristal, Daniel Hilliard, Robert Barnett, John Harrington, Edmund Ladd, Trume Andrews, John Patterson, Benjamin Patterson, John Doe, Richard Roe, James Black, and William Black, defendants of a plea of trespass and ejectment, which said bill was filed November 10th, A.D. 1859, and follows in these words, that is to say:

In the Circuit Court of the United States for the Districts of California, Northern District.

GUSTAVE TOUCHARD
v.
JAMES SINGLETON, DANIEL MCCREA, WILLIAM QUIN, JOHN COTTRELL, JOHN TOLLEY, OLIVER FARNSWORTH, ROBERT THOMPSON, JOSEPH AUBREY, MICKLE MCWELCH, PETER MCCRISTAL, DANIEL HILLIARD, ROBERT BARNETT, JOHN HARRINGTON, EDMUND LADD, TRUME ANDREWS, JOHN PATTERSON, BENJAMIN PATTERSON, JOHN DOE, RICHARD ROE, JAMES BLACK, and WILLIAM BLACK.

Complaint.

United States of America, Northern District of California.

The above-named plaintiff, Gustave Touchard, an alien, and citizen of the Empire of France, at president a resident of the State of California, Northern District aforesaid, by this his complaint, complains and alleges against the above-named defendants, whose real names are given, and also the defendants, John Doe, Richard Roe, James Black, and William Black, whose real names are unknown to this plaintiff, are citizens of, and at present residents in, the State of California, Northern District aforesaid; that heretofore, to wit, on the eighth day of November, 1859, the plaintiff was the owner in fee and entitled to the possession and in possession of certain land and tenements, described as follows:

All that certain tract of land situated in the county of Santa Clara and State of California, being a portion of the rancho known by the name of the "Yerba Bueana Rancho," and bounded and described as follows: commencing at a point bearing, with an easterly variation of fifteen degrees and thirty minutes, north forty-seven and one-half degrees west of a blazed oak tree in the "Portezuelo de las Animas," and distant therefrom two hundred and ten chains and sixty-eight links; thence running, with the same variation, the following courses: north forty-seven and one-half degrees west, through a lake called the "Laguna Seca," four hundred and eighty-three chains; thence south sixty-five degrees west, one hundred and fourteen chains and forty links, to the "Coyote creek;" thence up and along said creek, and following its meanderings, to a point opposite the southermost base of the hill called "Loma Lagrimas," and thence, in a straight line, south eighty-seven degrees east, two hundred and twenty-two chains to the place of commencement; which said land is situated in the Northern District aforesaid.

And afterwards, to wit, on the ninth day of November, 1859, when plaintiff was so lawfully entitled and in possession of said lands and tenements as aforesaid, the defendants unlawfully entered and trespassed into and upon the same, and unlawfully ejected the plaintiff therefrom, and have ever since unlawfully kept and withheld, and now unlawfully keep and withhold, the possession of said lands and tenements from plaintiff, who is entitled to entry therein, to the damage of plaintiff in the sum of $5,000.

Wherefore plaintiff prays for judgment, that he may recover possession of said land and tenements from the defendants, for judgment against them in the sum of five thousand dollars damage by plaintiff wrongfully sustained, and rents, issues, and profits as aforesaid, and for costs of suit.

SAUNDERS & CAMPBELL,
HALL McALLISTER,
Attorneys for Plaintiff.

Dated, San Francisco, November 10th, 1859.

Indorsed: Filed, November 10th, 1859. Geo. Pen Johnston, clerk. By Cutler McAllister, D.C.

Summons.

United States of America. In the Circuit Court of the United States for the Districts of California, for the Northern Districts.

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON and others, defendants.

Action brought in the said Circuit Court and the complaint filed in the city and county of San Francisco, in the office of the clerk of said Circuit Court.

The President of the United States, greeting:

To James Singleton, Daniel McCrea, William Quin, John Cottle, John Tolley, Oliver Farnsworth, Robert Thompson, Joseph Aubrey, Mickle McWelch, Peter McCristal, Geo. Hilliard, Robert Barnett, John Harrington, Edmund Ladd, Trume Andrews, John Patterson, Benjamin Patterson, John Doe, Richard Roe, James Black, and William Black, Henrietta Bollman.

You are hereby required to appear in an action brought against you by the above-named plaintiff in the Circuit Court of the United States for the Districts of California, and to file your plea, answer, or demurrer to the complaint filed therein (a copy of which accompanies this summons), in the office of the clerk of said court, in the city and county of San Francisco, within ten days (exclusive of Sundays, the day of service) after the service on you of this summons, if resident and served within this county; or, if resident and served out of this county, then within forty days, or judgment by default will be taken against you.

The said action is brought to recover possession of certain lands and tenements described as follows:

All that certain tract of land situated in the county of Santa Clara, and State of California, being a portion of the rancho known by the name of the "Yerba Buena Rancho," and bounded and described as follows: Commencing at a point bearing, with an easterly variation of fifteen degrees and thirty minutes, north forty-seven and one-half degrees west of a blazed oak tree, in the "Portezuela de las Animas," and distant therefrom two hundred and ten chains and sixty-eight links, thence running, with the same variation, the following courses: North, forty-seven and one-half degrees west, through a lake, called the "Laguna Seca," four hundred and eighty-three chains; thence south sixty-five degrees west, one hundred and fourteen chains and forty links, to the "Coyote creek;" thence up and

along said creek, and following its meanderings, to a point opposite the southernmost base of the hill called "Loma Lagrimas;" and thence in a straight line south eighty-seven degrees east, two hundred and twenty-two chains, to the place of commencement, which said land is situated in the Northern District aforesaid.

Also, for the sum of five thousand dollars damages for the unlawful detention thereof by defendants, and rents, issues, and profits of said land during said detention by defendants; and if you fail to appear and plead, answer or demur, as herein required, judgment by default will be entered against you and each of you, and the plaintiff will apply to the court for the relief demanded in the complaint.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this 10th [SEAL.] day of November, in the year of our Lord one thousand eight hundred and fifty-nine, and of our independence the eighty-fourth.

Attest: GEO. PEN JOHNSTON,
Clerk.
CUTLER MCALLISTER,
Deputy Clerk.

UNITED STATES MARSHAL'S OFFICE,
SAN FRANCISCO, November 16, 1859.

I hereby certify that I received this summons on the 10th day of November, 1859, and personally served the same on Trume Andrews, Daniel McCray, John Cottle, James Singleton, John Tolley, Oliver Farnsworth, Robert Thompson, Mickle McWelch, Peter McCristal, Orral P. Cottle, named in the summons as Richard Roe, and John Hasler, named in the summons as John Doe, in the county of Santa Clara, on the 12th day of November, 1859, and on William Quin, Joseph Aubry, George Hilliard, John Harrington, Edmund Ladd, John Patterson, Benjamin Patterson, and Henrietta Bollman (last not mentioned in the summons), in the county of Santa Clara, on the 14th day of November, 1859, by delivering to each of said defendants a copy of said summons attached to a certified copy of complaint; Robert Barnett, James Black, and William Black not found.

P. L. SOLOMON,
U. S. Marshal.
By S. LAMKIN,
Deputy.

Indorsed: Filed December 12th, 1859. Geo. Pen Johnston, Clerk. By Cutler McAllister, Deputy Clerk.

And afterwards, to wit, on the 27th day of December, in the year 1859, came the said defendants and filed the following "Notice of extension of time to answer," as follows, to wit:

Notice Extending Time to Answer.

In the Circuit Court of the United States for the Districts of California.

GUSTAVE TOUCHARD
v.
JAMES SINGLETON et al.

You will please to take notice that the time for the defendants to answer the complaint filed herein, has been extended until and including the 29th December, instant, by stipulation of plaintiffs' attorneys.

Yours, &c.,
CROCKETT & CRITTENDEN,
Attorneys for Defendants.

To GEO. PEN JOHNSTON, Esq.,
Clerk of said Court.

Indorsed: Filed December 27th, 1859. Geo. Pen Johnston, Clerk. By Cutler McAllister, D. C.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant, Mickle McWelch, and made answer as follows, to wit:

Answer of Mickle McWelch.

In the Circuit Court of the United States, for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants.
Answer.

The defendant, Mickle McWelch, for his separate answer to the complaint in the above entitled cause, says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any other time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit or at any time before then, the plaintiff was not nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint or any part thereof; on the the contrary, he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, the owners in fee, and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit or at any time before then, the plaintiff was not nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Isaac Branham and William L. Smith, in their own right, and as trustees for Josiah Belden and others, were the owners in fee, and entitled to the possession of the said premises, and every part thereof.

Wherefore, he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendant.

Dated San Francisco, December 28th, 1859.

Indorsed: Filed December 29th, 1859. Geo. Pen Johnston, clerk, by Cutler McAllister, deputy clerk.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant, James Singleton, and made answer as follows, to wit:

Answer of James Singleton.

In the Circuit Court of the United States, for the Districts of California, Northern District.

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendant, James Singleton, for his separate answer to the complaint in the above-entitled cause, says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not, nor is he now in the possession; nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

All that certain tract or parcel of land lying about five miles easterly from the city of San Jose, in the county of Santa Clara, State of California, and bounded and described as follows, to wit: Commencing at a stake standing in the bed of the Coyote creek, a sycamore tree, eighteen inches in diameter, bearing north from said stake one chain distant, said stake standing at the southwest corner of O. W. Farnsworth's land; thence along said creek upwards, S. 42 E. 20, 20 chains to a stake; thence N. 50° E. 74.50 chains, to a white oak two feet in diameter; thence N. 36° W. 19.00 chains, to a stake at the southeast corner of O. W. Farnsworth's land; thence S. 48° 15′ W. 77.73 chains, along said Fornsworth's land, to the place of beginning.

And as to the said portion last above described, the said defendant admits, that, at the time of the commencement of this suit, he was in the possession thereof; but he avers, that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants. And he denies that at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises and every part thereof, and were the owners in fee thereof; and whilst so the owners in fee and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the 12th day of December, 1859, by their deed of that date, sold and conveyed to this defendant, all their right, title, and interest, as said board of commissioners, in and to the premises last above described; and by virtue of said conveyance, this defendant became and was and is the owner in fee, and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendant says, that, at the time of the commencement of this suit, he was not, nor is he now in possession; nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

All that certain tract or parcel of land lying about five miles

easterly from the city of San Jose, in the county of Santa Clara, State of California, and bounded and described as follows, to wit: Commencing at a stake standing in the bed of the Coyote creek, a sycamore tree, eighteen inches in diameter, bearing north from said stake one chain distant, said stake standing at the southwest corner of O. W. Farnsworth's land; thence along said creek upwards, S. 42 E. 20.20 chains, to a stake; thence N. 50° E. 74.50 chains, to a white oak two feet in diameter; thence N. 36° W. 19.00 chains, to a stake at the southeast corner of O. W. Farnsworth's land; thence S. 48° 15′ W. 77.73 chains, along said Farnsworth's line, to the place of beginning; of which portion, the said defendant admits he was and is in possession; but he avers, that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants. And he denies that, at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary, he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises; and the said defendant is in the possession thereof, with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were as such commissioners the owners in fee, and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, Isaac Branham and William L. Smith, in their own right, and as

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trustees for Josiah Belden and others, were the owners in fee, and entitled to the possession of the said premises, and every part thereof.

Wherefore he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendants in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendant.

Dated San Francisco, December 28th, 1859.

Indorsed: Filed, December 29th, 1859. Geo. Pen Johnston, clerk. By Cutler McAllister, deputy clerk.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant, Daniel McCray, sued as "Daniel McCrea," and made answer as follows, to wit:

Answer of Daniel McCray, sued as Daniel McCrea.

In the Circuit Court of the United States, for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als. defendants. } Answer.

The defendant Daniel McCray, sued as "Daniel McCrea," for his separate answer to the complaint in the above entitled cause, says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not, nor is he now, in the possession, nor did he then, nor does he now, claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

Commencing at a stake at the northeast corner of land claimed by one John Tully, and at the east corner of land claimed by Edmund Ladd; thence south 36° E. 38 chains, 45 links, to a stake marked with two notches at the N. W. corner of F. H. Farnsworth's land; thence north 64° east, 17 chains, 70 links, to a stake marked with a figure 3; thence north 47° 30′ west, 43 chains, 10 links, to a post in a fence marked with four notches; thence south 47° 30′ west, 9 chains and 55 links, to the place of beginning, containing $54\frac{91}{100}$ acres. The above courses are true, and not magnetic.

And as to the said portion last above described, the said defendant

admits, that at the time of the commencement of this suit he was in the possession thereof; but he avers that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants, and he denies that at the time of the commencement of this suit the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises, and every part thereof, and were the owners in fee thereof; and whilst so the owners in fee, and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the 12th day of December, 1859, by their deed of that date, sold and conveyed to this defendant all their right, title, and interest, as said board of commissioners, in and to the premises last above described; and by virtue of said conveyance this defendant became, and was and is the owner in fee, and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, he was not, nor is he now, in possession, nor did he then, nor does he now, claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

Commencing at a stake at the northeast corner of land claimed by one John Tully, and at the east corner of land claimed by Edmund Ladd; thence south 36° E. 38 chains, 45 links, to a stake marked with two notches, at the N. W. corner of T. H. Farnsworth's land; thence north 64° E. 17 chains, 70 links, to a stake marked with a figure three; thence north 47° 30′ west, 43 chains, 10 links, to a post in a fence marked with 4 notches; thence south 47° 30′ west, 9 chains and 55 links, to the place of beginning; containing $54\frac{91}{100}$ acres. The above courses are true and not magnetic; of which portion the said defendant admits he was and is in possession; but he avers that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit the plaintiff was the owner in fee, or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary, he avers that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises, and the said defendant is in the possession thereof, with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, the mayor and common council of city of San Jose, were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint or any part thereof; on the contrary, he avers that at the time of the commencement of this, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, the owners in fee and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, Isaac Branham and William L. Smith, in their own right, and as trustees for Josiah Belden and others, were the owners in fee, and entitled to the possession of the said premises, and every part thereof.

Wherefore, he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said premises, in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendants.

Dated, San Francisco, December 28, 1859.

Indorsed: Filed, December 29th, 1859. Geo. Pen Johnston, clerk. Cutler McAllister, deputy clerk.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant, William Quin, and made answer as follows, to wit:

Answer of William Quin.

In the Circuit Court of the United States, for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendant William Quin, for his separate answer to the complaint in the above entitled cause, says that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not, nor is he now in the possession, nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

Commencing at the S. W. corner of Edward Ladd's land, about 3 miles southeasterly from the city of San Jose. Thence N. 48° W. 60 chains, 73 links, to the S. E. corner of John Tully's land. Thence S. 50 W. 64 chains, 19 links, to a county road. Thence S. 49° 45′ E. with said road, 59 chains. Thence N. 51° 30′ E. 62 chains 50 links, to the place of beginning. Containing $373\frac{45}{100}$ acres, and being known as 500 acre lot No. 7 (seven).

And as to the said portion last above described, the said defendant admits that at the time of the commencement of this suit, he was in the possession thereof; but he avers that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants; and he denies, that at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises, and every part thereof, and were the owners in fee thereof; and whilst so the owners in fee, and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards to wit: on the day of December, 1859, by their deed of that date, sold and conveyed to this defendant, all their right, title, and interest as said board of commissioners, in and to the premises last above described; and by virtue of said conveyance, this

defendant became, and was, and is the owner in fee, and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, he was not, nor is he now in possession, nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

Commencing at the S. W. corner of Edward Ladd's land, about 3 miles southeasterly from the city of San Jose; thence N. 48° W. 60 chains, 73 links, to the S. E. corner of John Tully's land. Thence S 50 W. 64 chains, 19 links, to a county road. Thence S. 49° 45′ E. with said road, 59 chains. Thence N. 51° 30′ E. 62 chains, 50 links, to the place of beginning, containing $373\frac{45}{100}$ acres, and being known as 500 acre lot No. 7 (seven); of which portion the said defendant admits he was and is in possession, but he avers that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants, and he denies that at the time of the commencement of this suit, the plaintiff was the owner in fee or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary, he avers that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises; and the said defendant is in the possession thereof, with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers that, at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, the owners in fee, and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner

in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers that, at the time of the commencement of this suit, Isaac Branham and William L. Smith, in their own right, and as trustees for Josiah Belden and others, were the owners in fee, and entitled to the possession of said premises, and every part thereof. Wherefore he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendant.

Dated San Francisco, December 28th, 1859.

Indorsed: Filed December 29th, 1859. Geo. Pen Johnston, clerk. By Cutler McAllister, deputy clerk.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant, John A. Cottle, sued as John Cottrell, and made answer as follows, to wit:

Answer of John A. Cottle, sued as John Cottrell.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendant, John A. Cottle, sued as John Cottrell, for his separate answer to the complaint in the above entitled cause, says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not, nor is he now in the possession, nor did he then, nor does he now, claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

All that certain tract or parcel of land lying about five miles easterly from the city of San Jose, in the county of Santa Clara, State of California, and bounded and described as follows, to wit:

Commencing at a stake at the N. E. corner of lot No. 3 of the 500 acre lots, and running thence N. 36° 53′ E. 39.30 chains, thence N. 34° 35′ E. 61.04 chains, thence S. 0 40′ W. 45.61 chains, thence S.

36° 19′ W. 63.50, thence N. 53° 07′ W. 25.31 chains, to the place of beginning. Also the following described tract of land, lying in said county and adjoining the above described tract on the west, bounded as follows: Commencing at a stake at the N. E. corner of lot No. 3 of the 500 acre lots, and running thence S. 53° E. 371.17 yards, thence S. 35° W. 868 yards, thence N. 60 W. 373.34 yards, thence N. 35 E. 893 yards, to the place of beginning. All of the above courses are magnetic.

And as to the said portion last above described, the said defendant admits that, at the time of the commencement of this suit, he was in the possession thereof; but he avers that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants; and he denies that, at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary, he avers that, at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises, and every part thereof, and were the owners in fee thereof, and whilst so the owners in fee and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the 12th day of December, 1859, by their deed of that date, sold and conveyed to this defendant, and to one Oliver Cottle, all their right, title, and interest as said board of commissioners, in, and to the premises last above described; and by virtue of said conveyance this defendant and said Oliver Cottle became and were, and are the owners in fee, and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendant says that, at the time of the commencement of this suit, he was not, nor is he now in possession, nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described, and bounded as follows, to wit: All that certain tract or parcel of land lying about five miles easterly from the city of San Jose, in the county of Santa Clara, State of California, and bounded and described as follows, to wit: Commencing at a stake at the N. E. corner of lot No. 3 of the 500 acre lots, and running thence N. 36° 53′ E. 39.30 chains, thence N. 34° 35′ E. 61.04 chains, thence S. 0 40′ W. 45.61 chains, thence S. 36° 19′ W. 63.50, thence N. 53° 07′ W. 25.31 chains to the place of beginning. Also the following described tract of land lying in said county, and adjoining the above described tract on the west, bounded as follows: Commencing at a stake at the N. E. corner of lot No. 3 of the 500 acre lots, and running thence S. 53° E. 371.17 yards, thence S. 35° W. 868 yards, thence N. 60

W. 373.34 yards, thence N. 35 E. 893 yards, to the place of beginning. All the above courses are magnetic; of which portion the said defendant admits he was and is in possession; but he avers that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants; and he denies that, at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary, he avers that, at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises, and the said defendant is in the possession thereof, with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose, were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit. Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, the owners in fee, and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Isaac Branham and William L. Smith, in their own right, and as trustees for Josiah Belden and others, were the owners in fee, and entitled to the possession of the said premises, and every part thereof.

Wherefore, he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff, for the costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendant.

Dated San Francisco, December 28, 1859.

Indorsed: Filed December 29, 1859. Geo. Pen Johnston, clerk. By Cutler McAllister, deputy clerk.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant, John Tully, sued as John Tolley, and made answer as follows, to wit:

Answer of John Tully, sued as John Tolley.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendant, John Tully, sued as John Tolley, for his separate answer to the complaint in the above entitled cause, says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not, nor is he now in the possession, nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: Commencing in the Coyote creek, where the southern line of William Quinn's land crosses the same, thence up said creek, following its meanderings thus: S. 24 E. 16 chains, thence S. 11 E. 27 chains, thence S. 49 E. 11 chains, 50 links, to a corner of a fence on the east side of said creek; thence north 43° 21′ E. 42 chains, 50 links, to a stake marked 22, which stands at the corner of four fences; thence N. 37 W. 59 chains, 75 links, to the southeast corner of said Quinn's land, where the fences corner; thence S. 51 W. 35 chains with the line of said Quinn's land to the place of beginning; containing two hundred and thirty-six and $\frac{48}{100}$ acres. The above courses are true, and not magnetic.

And as to the said portion last above described, the said defendant admits, that at the time of the commencement of this suit, he was in the possession thereof; but he avers, that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants; and he denies that, at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners,

entitled to the possession of the said premises, and every part thereof, and were the owners in fee thereof, and whilst so the owners in fee, and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the 12th day of December, 1859, by their deed of that date, sold and conveyed to this defendant all their right, title, and interest as said board of commissioners, in and to the premises last above described; and by virtue of said conveyance this defendant became, and was and is the owner in fee, and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, he was not, nor is he now in possession, nor did he then, nor does he now, claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

Commencing in the Coyote creek where the southern line of William Quinn's land crosses the same, thence up said creek following its meanderings thus: S. 24 E. 16 chains, thence S. 11 E. 27 chains, thence S. 49 E. 11 chains, 50 links, to a corner of a fence on the east side of said creek, thence N. 43° 20′ E. 42 chains, 50 links, to a stake marked 22, which stands at the corner of four fences, thence N. 37 W. 59 chains, 75 links, to the southeast corner of said Quinn's land, where three fences corner, thence S. 51 W. 35 chains with the line of said Quinn's land to the place of beginning, containing two hundred and thirty-six $\frac{48}{100}$ acres. The above courses are true and not magnetic; of which portion the said defendant admits he was and is in possession; but he avers that his said possession was several and exclusive and was not a joint possession with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit; the plaintiff was the owner in fee, or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary he avers, that at the time of the commencement of this suit the mayor and common council of the city of San Jose were the owners in fee and entitled to the possession of the said premises, and the said defendant is in the possession thereof, with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee or entitled to the possession or in possession of the premises described in the complaint, or any part thereof; on the contrary he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San José were the owners in fee and entitled to the possession of the said premises.

And for a further and separate defence and answer the said de-

fendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee or entitled to the possession or in possession of the premises described in the complaint or any part thereof; on the contrary he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose were, as such commissioners, the owners in fee and entitled to the possession of said premises and every part thereof.

And for a further and separate defence and answer the said defendant says, that at the time of the commencement of this suit or at any time before then, the plaintiff was not nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary he avers, that at the time of the commencement of this suit, Isaac Branham and William L. Smith, in their own right, and as trustees for Josiah Belden and others, were the owners in fee and entitled to the possession of the said premises, and every part thereof.

Wherefore, he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendant.

Dated San Francisco, December 28th, 1859.

Indorsed: Filed December 29th, 1859, George Pen Johnston, clerk, by Cutler McAllister, deputy clerk.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant, Oliver Farnsworth, and made answer as follows, to wit:

Answer of Oliver Farnsworth.

In the Circuit Court of the United States, for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendant Oliver Farnsworth, for his separate answer to the complaint in the above entitled cause says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not, nor is he now in the possession, nor did he then, nor does he now, claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

Commencing at a stake in the channel of the Coyote creek, a sycamore tree, eighteen inches in diameter, bearing N. 50 links distant, thence N. 48° E. 77.73 chains to a stake, thence N. 33 W. 21 chains to a stake marked S. and W., and standing on the southern line of 500 acre lot No. 53; thence S. 50° 15′ W. 88.50 chains along the line of said lot to a stake on the bank of said creek, thence along said creek upwards S. 62° 30 E. 5.00 chains, thence S. 49° E. 5.00 chains, thence S. 75° E. 10 chains, thence S. 47° E. 4.70 chains to the place of beginning; also that other certain lot or parcel of land, lying north of the above described tract and adjoining it, bounded as follows, to wit: Commencing at a stake marked D. from which an oak tree bears S. 78 east, magnetic, and running thence N. 60° W. 186.66 yards, thence N. 35° E. 868 yards, thence S. 53° E. 185.58 yards to a stake at the S. E. corner of lot No. 3, and the S. W. corner of lot No. 53 of the 500 acre lots, thence S. 53° W. 868 yards, to the place of beginning. The courses of the first tract above described are true, and those of the second tract magnetic. And as to the said portion last above described, the said defendant admits, that at the time of the commencement of this suit he was in the possession thereof; but he avers that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises and every part thereof, and were the owners in fee thereof, and whilst so the owners in fee and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the 12th day of December, 1859, by their deed of that date, sold and conveyed to this defendant, all their right, title, and interest, as said board of commissioners in and to the premises last above described; and by virtue of said conveyance this defendant became, and was and is the owner in fee and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, he

was not, nor is he now, in possession, nor did he then, nor does he now, claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: Commencing at a stake in the channel of the Coyote creek, a sycamore tree, eighteen inches in diameter, bearing north 50 links distant; thence north 48° E. 77.73 chains, to a stake; thence N. 33 W. 21 chains, to a stake marked S. & W., and standing on the southern line of 500 acre lot No. fifty-three; thence S. 50° 15′ W. 88.50 chains along the line of said lot, to a stake on the bank of said creek; thence along said creek upwards S. 62° 30 E. 5.00 chains; thence S. 49° E. 5.00 chains; thence S. 75 E. 10 chains; thence S. 47° E. 4.70 chains, to the place of beginning. Also that other certain lot or parcel of land, lying north of the above described tract, and adjoining it, bounded as follows, to wit: Commencing at a stake marked D., from which an oak tree bears S. 78′ E. magnetic, and running thence N. 60° W. 186.66 yards; thence N. 35° E. 868 yards; thence S. 53° E. 185.58 yards, to a stake at the S. E. corner of lot No. 3, and the S. W. corner of lot No. 53, of the 500 acre lots; thence S. 35° W. 868 yards, to the place of beginning. The courses of the first tract above described are true, and those of the second are magnetic, of which portion the said defendant admits he was and is in possession; but he avers that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit, the plaintiff was the owner in fee or entitled to the possession, or in possession, of any portion of the premises last above described; on the contrary, he avers that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee and entitled to the possession of the said premises, and the said defendant is in the possession of thereof, with license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession, or in possession, of the premises described in the complaint, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, the mayor and common council of the the city of San Jose were the owners in fee and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession, or in possession, of the premises described in the complaint, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, con-

stituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, the owners in fee and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession, or in possession, of the premises described in the complaint, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, Isaac Branham and William L. Smith, in their own right, and as trustees for Josiah Belden and others, were the owners in fee, and entitled to the possession of the said premises, and every part thereof.

Wherefore he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendant.

Dated, San Francisco, December 28th, 1859.

Indorsed: Filed December 29th, 1859. George Pen Johnston, clerk, by Cutler McAllister, D. C.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant Robert Thompson, and made answer as follows, to wit:

Answer of Robert Thompson.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendant Robert Thompson, for his separate answer to the complaint in the above entitled cause, says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not, nor is he now, in the possession, nor did he then, nor does he now, claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

Commencing at a stake at the corner of J. Singleton's land, running thence S. 45° E. 14.80 chains, to a stake; thence south 48° W. 79.25 chains, to a stake in the bed of the Coyote creek; thence N. 18° W. 10 chains; thence N. 40° W. 8.15 chains, to a stake at the S. W. corner of J. Singleton's land; thence N. 50° E. 74.50 chains, to the place of beginning; containing $127\frac{37}{100}$ acres.

And as to the said portion last above described, the said defendant admits that at the time of the commencement of this suit, he was in the possession thereof as the tenant and lessee of Robert Bonner, but he avers that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises, and every part thereof, and were the owners in fee thereof, and whilst so the owners in fee and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the day of December, 1859, by their deed of that date, sold and conveyed to the said Robert Bonner, lessor as aforesaid of this defendant, all their right, title, and interest as said board of commissioners, in and to the premises last above described; and by virtue of said conveyance, the said Bonner, lessor of this defendant, became, and was, and is, the owner in fee and entitled to the possession thereof, and this defendant holds and is entitled to possession thereof as lessee aforesaid, and relies upon the title of said Bonner, as herein set forth, as a defence to said action.

And for a further and separate defence and answer the said defendant says, that at the time of the commencement of this suit, he was not nor is he now in possession, nor did he then nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

Commencing at a stake at the corner of J. Singleton's land, running thence S. 45° E. 14.80 chains, to a stake; thence south 48° W. 79.25 chains, to a stake in the bed of the Coyote creek; thence N. 18° W. 10 chains; thence N. 40° W. 8.15 chains to a stake at the S. W. corner of J. Singleton's land; thence N. 50° E. 74.50 chains, to the place of beginning, containing $127\frac{37}{100}$ acres, of which portion the said defendant admits he was and is in possession; but he avers that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants; and he

denies that at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary, he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee and entitled to the possession of the said premises, and the said defendant is in the possession thereof with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession or in possession of the premises described in the complaint, or any part thereof; on the contrary he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession or in possession of the premises described in the complaint, or any part thereof; on the contrary he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, the owners in fee and entitled to the possession of said premises and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Isaac Branham and William L. Smith, in their own right and as trustees for Josiah Belden and others, were the owners in fee and entitled to the possession of the said premises and every part thereof.

Wherefore he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendant.

Dated San Francisco, December 28, 1859.

Indorsed: Filed, December 29, 1859. Geo. Pen Johnston, clerk, by Cutler McAllister, D. C.

And afterwards, to wit, on the 29th day of December, in the year

1859, came the said defendant, Joseph Aubrey, and made answer as follows, to wit:

Answer of Joseph Aubrey.

In the Circuit Court of the United States, for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendant, Joseph Aubrey, for his separate answer to the complaint in the above entitled cause, says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not, nor is he now in the possession, nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

Bounded as follows: commencing at a stake standing in the bed of the Coyote creek at the southwest corner of John Bonner's land; thence along said creek S. 21 E. 13.00 chains; thence S. 55 E. 17.33 chains; thence N. 55 E. 45.36 chains; thence N. 48° W. 37.35 chains to a stake; thence S. 48° W. along the line of John Bonner's land 39.25 chains, to the place of beginning, containing $148\frac{38}{100}$ acres.

And as to the said portion last above described, the said defendant admits that at the time of the commencement of this suit he was in the possession thereof; but he avers that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit the plaintiff was owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the fund debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises, and every part thereof, and were the owners in fee thereof; and whilst so the owners in fee, and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the day of December, 1859, by their deed of that date, sold and conveyed to this defendant, all their right, title and interest, as said board of commissioners, in and to the premises last

above described; and by virtue of said conveyance, this defendant became, and was, and is the owner in fee and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit he was not, nor is he now, in possession; nor did he then, nor does he now, claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: Commencing at a stake standing in the bed of the Coyote creek, at the southwest corner of John Bonner's land; thence along said creek south 21 east, 13.00 chains; thence south 55 east, 17.33 chains; thence north 55 east, 45.36 chains; thence north 48° west, 37.35 chains to a stake; thence south 48° west, along the line of John Bonner's land, 39.25 chains to the place of beginning; containing 148 $\frac{38}{100}$ acres, of which portion the said defendant admits he was and is in possession; but he avers that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit the plaintiff was the owner in fee, or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary, he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises; and the said defendant is in the possession thereof, with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose were, as such commissioners, the owners in fee, and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the

owner in fee, or entitled to the possession or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Isaac Branham and William L. Smith, in their own right, and as trustees for Josiah Belden and others, were the owners in fee, and entitled to the possession of the said premises, and every part thereof.

Wherefore he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendant.

Dated San Francisco, December 28, 1859.

Indorsed: Filed December 29, 1859. Geo. Pen Johnston, clerk, by Cutler McAllister, D. C.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant, Peter McChristal, and made answer as follows, to wit:

Answer of Peter McChristal.

In the Circuit Court of the United States, for the Districts of California. Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendant, Peter McChristal, for his separate answer to the complaint in the above entitled cause says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not, nor is he now in the possession, nor did he then, nor does he now, claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: Commencing at the northwest corner, at a sycamore five feet in diameter, marked with three notches on two sides, north and east, standing on the east bank of the Coyote creek, the same being the southwest corner of Michael Welch's claim; thence running north 83 east, six chains, ten links, to a red rock, two feet face, on the south side of a white oak three feet in diameter, marked with three bazes south side; thence south 31 east, twenty-four chains, to a stake marked with three notches

on one side, standing in a bottom; thence south 41 west, eighteen chains, fifty links, to a stake, from which a sycamore seven inches in diameter bears north twenty links distant; thence north 62 west, with the meanders of the Coyote creek, twelve chains; thence north 21 west, fourteen chains, seventy-five links; thence north 35 east, seventeen chains, twenty-five links, to the beginning. And as to the said portion last above described, the said defendant admits that at the time of the commencement of this suit he was in the possession thereof; but he avers that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants; and he denies that, at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession or in possession of the premises last above described, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises and every part thereof, and were the owners in fee thereof; and whilst so the owners in fee, and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the day of December, 1859, by their deed of that date, sold and conveyed to this defendant all their right, title, and interest, as said board of commissioners, in and to the premises last above described; and by virtue of said conveyance, this defendant became and was and is the owner in fee, and entitled to the possession thereof.

And for a further and separate defence and answer the said defendant says, that at the time of the commencement of this suit he was not, nor is he now in possession, nor did he then nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: commencing at the N. W. corner, at a sycamore, five feet in diameter, marked with three notches on two sides, N. and E., standing on the E. bank of the Coyote creek, the same being the S. W. corner of Michael Welch's claim. Thence running N. 83 E. 6 chains, 10 links, to a red rock, two feet face, on the S. side of a white oak three feet in diameter, marked with three bazes, S. side; thence S. 31 E. 24 chains, to a stake, marked with three notches on one side, standing in a bottom; thence S. 41 W. 18 chains, 50 links, to a stake, from which a sycamore, seven inches in diameter, bears N. 20 links distant; thence N. 62 W. with the meanders of the Coyote creek, 12 chains; thence N. 21 W. 14 chains, 75 links; thence N. 35 E. 17 chains, 25 links, to the beginning; of which portion the said defendant admits he was and is in possession; but he avers that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants;

and he denies that at the time of the commencement of this suit, the plaintiff was the owner in fee or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary, he avers, that at the time of the commencement of this suit the mayor and common council of the city of San Jose were the owners in fee and entitled to the possession of the said premises, and the said defendant is in the possession thereof, with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before the then plaintiff was not, nor is he now, the owner in fee or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, the owners in fee and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Isaac Branham and William L. Smith, in their own right, and as trustees for Josiah Belden and others, were the owners in fee and entitled to the possession of the said premises, and every part thereof.

Wherefore he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendants.

Dated, San Francisco, December 28th, 1859.

Indorsed: Filed, December 29th, 1860. Geo. Pen Johnston, clerk, by Cutler McAllister, D.C.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant, George Hellyer, sued as Daniel Hilliard, and made answer as follows, to wit:

Answer of George Hellyer, sued as Daniel Hilliard.

In the Circuit Court of the United States for the Districts of California. Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff, *v.* JAMES SINGLETON et als., defendants. } Answer.

The defendant, George Hellyer, sued as Daniel Hilliard, for his separate answer to the complaint in the above-entitled cause, says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not, nor is he now in the possession, nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: commencing at an oak tree marked T, standing on the east side of the Coyote creek, and running thence S. 11° 05′ E. 4.20 chains, to the east bank of the said creek; thence along up said creek to an oak tree, standing on a rocky bluff and marked T, said last-mentioned tree being distant from the said first-mentioned tree, in a straight line, 39.40 chains; thence N. 78° 55′ E. 19.99 chains; thence N. 11.05 W. 39.40 chains; thence S. 78° 55′ W. 19.99 chains, to the place of beginning.

And as to the said portion last above described, the said defendant admits that at the time of the commencement of this suit, he was in the possession thereof, but he avers that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants, and he denies that at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose were, as such commissioners, entitled to the possession of the said premises and every part thereof, and were the owners in fee thereof, and whilst so the owners in fee and entitled to

the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards to wit, on the 12th day of December, 1859, by their deed of that date, sold and conveyed to this defendant, all their right, title, and interest as said board of commissioners, in and to the premises last above described, and by virtue of said conveyance, this defendant became and was and is the owner in fee, and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, he was not nor is he now in possession, nor did he then nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: Commencing at an oak tree, marked T, standing on the east side of the Coyote creek, and running thence S. 11° 05′ E. 4.20 chains, to the east bank of the said creek, thence along up said creek to an oak tree standing on a rocky bluff and marked T., said last-mentioned tree being distant from the said first-mentioned tree in a straight line 39.40 chains, thence N. 78° 55′ E. 19.99 chains, thence N. 11.05 W. 39.40 chains, thence S. 78° 55′ W. 19.99 chains, to the place of beginning, of which portion the said defendant admits he was and is in possession, but he avers that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit, the plaintiff was the owner in fee or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary, he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee and entitled to the possession of the said premises, and the said defendant is in the possession thereof with the license and consent of the said mayor and common council.

And for a further and separate defence and answer the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not nor is he now the owner in fee or entitled to the possession or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San

Jose, were, as such commissioners, the owners in fee, and entitled to the possession of said premises and every part thereof.

And for a further and separate defence and answer the said defendant says, that at the time of the commencement of this suit or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession or in possession of the premises described in the complaint, or any part thereof; on the contrary he avers, that at the time of the commencement of this suit, Isaac Branham and William L. Smith, in their own right and as trustees for Josiah Belden and others, were the owners in fee, and entitled to the possession of the said premises, and every part thereof.

Wherefore he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendants.

Dated San Francisco, December 28, 1859.

Indorsed: Filed December 29, 1859. George Pen Johnston, clerk, by Cutler McAllister, deputy clerk.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant, John W. Herndon, sued as John Harrington, and made answer as follows, to wit:

Answer of John W. Herndon, sued as John Harrington.

In the Circuit Court of the United States for the Districts of California. Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendant John W. Herndon, sued as John Harrington, for his separate answer to the complaint in the above entitled cause, says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not, nor is he now in the possession, nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: All that certain tract and parcel of land situated in said county of Santa Clara,

about six miles southeasterly from the city of San Jose, described as follows: Commencing at a stake notched on two sides, which stands at the N. W. corner of Mrs. H. Bollman's land; thence running N. 63 E. 41 chains, 50 links, to a gate-post, marked with two notches; thence N. 23 W. 23 chains, 25 links, to a stake with two notches, one on each side, thence S. 13 W. 13 chains 25 links, to the centre of the road, witness tree a white oak, 14 inches in diameter, bearing S. 19 links distant, marked with two notches; thence N. 75 W. 39 chains, 88 links, to a corner in the middle of a lane; thence S. 13 W. 5 chains, 70 links, to a stake, marked with six notches, at the corner of a fence; thence S. 50 W. 3 chains, 25 links to a stake marked with 6 notches; thence S. 33 E. with the line of O. W. Farnsworth and J. Singleton's land, 36 chains and 31 links, to the place of beginning, being one hundred and twenty $\frac{75}{100}$ acres. The above courses are true and not magnetic.

And as to the said portion last above described, the said defendant admits that at the time of the commencement of this suit, he was in the possession thereof; but he avers that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises, and every part thereof, and were the owners in fee thereof, and whilst so the owners in fee and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the 12th day of December, 1859, by their deed of that date, sold and conveyed to this defendant, all their right, title, and interest, as said board of commissioners, in and to the premises last above described; and by virtue of said conveyance this defendant became and was and is the owner in fee and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit he was not, nor is he now in possession, nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: All that certain tract and parcel of land situated in said county of Santa Clara, about six miles southeasterly from the city of San Jose, described as follows: commencing at a stake notched on two sides, which stands at the N. W. corner of Mrs. H. Bollman's land; thence running N. 63 E. 41 chains,

50 links, to a gate-post, marked with two notches; thence N. 23 W. 23 chains, 25 links, to a stake with two notches, one on each side; thence S. 13 W. 13 chains, 25 links, to the centre of the road, witness tree a white oak, 14 inches in diameter, bearing S. 19 links distant, marked with two notches; thence N. 75 W. 39 chains, 88 links, to a corner in the middle of a lane; thence S. 13 W. 5 chains, 70 links, to a stake marked with 6 notches, at the corner of a fence: thence S. 50 N. 3 chains, 25 links, to a stake marked with 6 notches, thence S. 33 E. with the line of O. W. Farnsworth and J. Singleton's land, 36 chains and 31 links, to the place of beginning, being one hundred and twenty $\frac{75}{100}$ acres; the above courses are true and not magnetic. Of which portion the said defendant admits he was and is in possession; but he avers, that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants: and he denies that at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary, he avers that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee and entitled to the possession of the said premises, and the said defendant is in the possession thereof with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any other time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in the possession of the premises described in the complaint or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San José, were, as such commissioners, the owners in fee, and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Isaac Branham and William L. Smith, in their own right, and as trustees for

Josiah Belden and others, were the owners in fee, and entitled to the possession of the said premises, and every part thereof.

Wherefore, he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendants.

Dated San Francisco, December 28, 1859.

Indorsed: Filed December 29th, 1860. Geo. Pen Johnston, clerk, by Cutler McAllister, D. C.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant Edmund Ladd, and made answer as follows, to wit:

Answer of Edmund Ladd.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendant Edmund Ladd, for his separate answer to the complaint in the above entitled cause says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not, nor is he now in the possession, nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

Commencing at the N. E. corner of the lands occupied by W. Quinn, and at the N. E. corner of the land of John Tully, running thence N. 50° E. 60.70 chains to a stake standing at the N. W. corner of land occupied by Daniel McCray, thence S. 87° 20′ W. 39.18 chains; thence S. 50° 40′ W. 35.07 chains; thence S. 48° E. 29.40 to the place of beginning, containing 137 acres.

And as to the said portion last above described, the said defendant admits that at the time of the commencement of this suit he was in the possession thereof; but he avers that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants; and he denies that at the time of the commencement of

this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises, and every part thereof, and were the owners in fee thereof, and, whilst so the owners in fee, and entitled to the said possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the day of December, 1859, by their deed of that date, sold and conveyed to this defendant, all their right, title, and interest as said board of commissioners, in and to the premises last above described; and by virtue of said conveyance this defendant became and was and is the owner in fee and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, he was not nor is he now in possession, nor did he then nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint except that portion thereof described and bounded as follows, to wit:

Commencing at the S. E. corner of the lands occupied by W. Quinn, and at the N. E. corner of the land of John Tully, running thence N. 50° E. 60.70 chains to a stake standing at the N. W. corner of land occupied by Daniel McCray, thence S. 87° 20′ W. 39.18 chains; thence S. 50° 40 W. 35.07 chains; thence S. 48° E. 29.40 to the place of beginning, containing 137 acres, of which portion the said defendant admits he was and is in possession; but he avers that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit the plaintiff was the owner in fee or entitled to the possession, or in possession of any portion of the premises last above-described; on the contrary, he avers that at the time of the commencement of this suit the mayor and common council of the city of San Jose were the owners in fee and entitled to the possession of the said premises, and the said defendant is in the possession thereof with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, the owners in fee, and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers that, at the time of the commencement of this suit, Isaac Branham, and William L. Smith, in their own right, and as trustees for Josiah Belden and others, were the owners in fee, and entitled to the possession of the said premises, and every part thereof.

Wherefore he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendants.

Dated San Francisco, December 28th, 1859.

Indorsed: Filed, December 29th, 1859. Geo. Pen Johnston, clerk, by Cutler McAllister, deputy clerk.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant, Orval B. Cottle, and made answer as follows, to wit:

Answer of Orval B. Cottle.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendant Orval B. Cottle, for his separate answer to the complaint in the above entitled cause says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said de-

fendant says, that at the commencement of this suit, the said defendant was not, nor is he now in the possession, nor did he then, nor does he now, claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

All that certain tract or parcel of land lying about five miles easterly from the city of San Jose, in the county of Santa Clara, State of California, bounded and described as follows: commencing at a stake at the N. E. corner of Joseph Aubrey's land, a white oak four feet in diameter bearing N. 44° E. 1.50 chains distant; thence N. 48° E. along the line of said Bonner 40 chains to a stake, a live oak tree, two and one-half feet in diameter, bearing S. 50 W. 62 links distant, thence S. 48 E. 40 chains, to a stake; thence S. 48° W. 40 chains; thence N. 48° W. 40.15 links, to the place of beginning.

And as to the said portion last above described, the said defendant admits that at the time of the commencement of this suit he was in the possession thereof; but he avers that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises, and every part thereof, and were the owners in fee thereof, and whilst so the owners in fee and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the 12th day of December, 1859, by their deed of that date, sold and conveyed to this defendant all their right, title, and interest, as said board of commissioners, in and to the premises last above described; and by virtue of said conveyance this defendant became and was and is the owner in fee, and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit he was not, nor is he now in possession, nor did he then, nor does he now, claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit:

Commencing at a stake at the N. E. corner of Joseph Aubrey's land, a white oak four feet in diameter bearing N. 44″ E. 1.50 chains distant; thence N. 48° E. along the line of said Bonner 40 chains to a stake, a live oak tree two and one-half feet in diameter, bearing S. 50 W. 62 links distant; thence S. 48 E. 40 chains to a stake; thence

S. 48″ W. 40 chains; thence N. 48° W. 40.15 links, to the place of beginning, of which portion the said defendant admits he was and is in possession; but he avers that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit the plaintiff was the owner in fee, or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary, he avers, that at the time of the commencement of this suit the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises, and the said defendant is in the possession thereof with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof. On the contrary, he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof. On the contrary, he avers, that at the time of the commencement of this suit Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, the owners in fee, and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this, or at any time before then, the plaintiff was not, nor is he now, the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof. On the contrary, he avers, that at the time of the commencement of this suit Isaac Branham and William L. Smith, in their own right, and as trustees for Josiah Belden and others, were the owners in fee, and entitled to the possession of the said premises, and every part thereof.

Wherefore, he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendants.

Dated San Francisco, December 28th, 1859.

Indorsed: Filed December 29th, 1859. Geo. Pen Johnston, clerk, by Cutler McAllister, deputy clerk.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant, John Hassler, and made answer as follows, to wit:

Answer of John Hassler.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
vs.
JAMES SINGLETON et al., defendants. } Answer.

The defendant John Hassler, for his separate answer to the complaint in the above-entitled cause, says, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not, nor is he now, in the possession, nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: All that certain tract and parcel of land situated in the said county of Santa Clara, bounded and described as follows: Commencing at a stake standing in a ravine on a line of the land of J. and B. Patterson, N. 38 E. 8 chains, 24 links, from J. and B. Patterson's S. W. corner; thence S. 48 E. 42 chains, 50 links, to a stake on the E. side of a hill, and a live-oak stump 10 inches in diameter, 2 feet high, stands W. 6 links distant, blazed on the side; then N. 39 E. 39 chains, 75 links, to a stake with one notch on two sides, S. W. and N. W., at a corner of a fence, from which a witness tree, a white oak 2 feet in diameter, bears S. 5 E. 10 links distant; thence N. 48 W. 43 chains, to a stake marked with one notch on three sides, N. W., S. W., and S. E., at a corner of a fence, being the S. E. corner of J. & B. Patterson's land; thence S. 38 W. on a line of J. & B. Patterson's land, 40 chains, to the place of beginning, containing $169\frac{62}{100}$ acres. The above courses are true and magnetic.

And as to the said portion last above described, the said defendant admits, that at the time of the commencement of this suit he was in the possession thereof; but he avers that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof. On the contrary, he avers that at the time of the com-

mencement of this suit Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises, and every part thereof, and were the owners in fee thereof, and whilst so the owners in fee, and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the 13th day of December, 1859, by their deed of that date, sold and conveyed to this defendant all their right, title, and interest as said board of commissioners, in and to the premises last above described; and by virtue of said conveyance this defendant became and was and is the owner in fee, and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit he was not, nor is he now in possession, nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: Commencing at a stake standing in a ravine on a line of the land of J. and B. Patterson, N. 38 E. 8 chains, 24 links, from J. and B. Patterson's S. W. corner; thence S. 48 E. 42 chains, 50 links, to a stake on the E. side of a hill, and a live oak stump, 10 inches in diameter 2 feet high, stands W. 6 links distant, blazed on the E. side; thence N. 39 E. 39 chains, 75 links, to a stake with one notch on two sides, S. W. and N. W., at a corner of a fence, from which a witness tree, a white oak 2 feet in diameter, bears S. 5 E. 10 links distant; thence N. 48 W. 43 chains to a stake, marked with one notch on three sides, N. W., S. W., and S. E., at a corner of a fence, being the S. E. corner of J. and B. Patterson's land; thence S. 38 W. on a line of J. and B. Patterson's, 40 chains, to the place of beginning—containing one hundred and sixty-nine and $\frac{62}{100}$ acres: the above courses are true, and not magnetic: of which portion the said defendant admits he was and is in possession; but he avers, that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants; and he denies that at the time of the commencement of this suit the plaintiff was the owner in fee, or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary, he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises, and the said defendant is in the possession thereof with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession of the premises described

in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, the owners in fee and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Isaac Brenham and William L. Smith, in their own right, and as trustees for Josiah Belden and others, were the owners in fee, and entitled to the possession of the said premises, and every part thereof.

Wherefore, he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendants.

Dated San Francisco, December 28th, 1859.

Indorsed: Filed, December 29th, 1859. Geo. Pen Johnson, clerk, by Cutler McAllister, deputy clerk.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant Henrietta Bollman, and made answer as follows, to wit:

Answer of Henrietta Bollman.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendant Henrietta Bollman, for his separate answer to the complaint in the above entitled cause says, that on the 8th day of

November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, the said defendant was not nor is he now in the possession, nor did he then nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: all that certain parcel of land situated in the said county of Santa Clara, about six miles southeasterly from the city of San Jose, described as follows: Beginning at a stake, marked with a notch on two sides, at the S. W. corner of J. W. Herndon's lands; thence running N. 63 E. 48 chains, 20 links, to a stake in a ravine; thence up said ravine with the following meanderings: S. 32 E. 4 chains, E. 8 chains, 75 links; thence S. 15 E. 3 chains, 50 links; thence S. 68 E. 2 chains, 50 links; thence S. 37 E. 16 chains; thence S. 5 W. 7 chains, to a stake at the corner of a fence; thence N. 53 W. 11 chains, 40 links, to a stake at N. E. corner of J. and B. Patterson's land; thence S. 61 W. 45 chains, 9 links, to a stake at the corner of a fence on Cottle's line; thence N. 48 W. 5 chains, 36 links, to the N. E. corner of O. B. Cottle's land; thence N. 45 W. 14 chains, 80 links, to the N. E. corner of J. Bonner's land; thence N. 32 W. 5 chains, 10 links, to the place of beginning, containing $135\frac{10}{100}$ acres. The above courses are true, and not magnetic.

And as to the said portion last above described, the said defendant admits, that at the time of the commencement of this suit, he was in the possession thereof, but he avers, that he was in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of his co-defendants; and he denies that, at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises, and every part thereof, and were the owners in fee thereof, and whilst so the owners in fee, and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the 12th day of December, 1859, by their deed of that date, sold and conveyed to this defendant, all their right, title, and interest as said board of commissioners, in and to the premises last above described; and by virtue of said conveyance this defendant became, and was and is the owner in fee, and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, he was not, nor is he now in possession, nor did he then, nor does he now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: Beginning at a stake marked with a notch on two sides at the S. W. corner of J. W. Herndon's land, thence running N. 63 E. 48 chains, 20 links, to a stake in a ravine; thence up said ravine with the following meanderings: S. 32 E. 4 chains, E. 8 chains, 75 links; thence S. 15 E. 3 chains, 50 links; thence S. 68 E. 2 chains, 50 links; thence S. 37 E. 16 chains; thence S. 5 W. 7 chains, to a stake at the corner of a fence; thence N. 53 W. 11 chains, 40 links, to a stake at N. E. corner of J. and B. Patterson's land; thence S. 61 W. 45 chains, 9 links, to a stake at the corner of a fence on Cottle's lines; thence N. 48 W. 5 chains, 36 links, to the N. E. corner of O. B. Cottle's land; thence N. 45 W. 14 chains, 80 links, to the N. E. corner of J. Bonner's land; thence N. 32 W. 5 chains, 10 links, to the place of beginning, containing $135\frac{10}{100}$ acres: the above courses are true and not magnetic; of which portion the said defendant admits he was and is in possession; but he avers, that his said possession was several and exclusive, and was not a joint possession with any one or more of his co-defendants; and he denies that, at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary, he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises; and the said defendant is in the possession thereof, with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city

of San Jose, were, as such commissioners, the owners in fee, and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendant says, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, he avers, that at the time of the commencement of this suit, Isaac Brenham and William L. Smith, in their own right, and as trustees for Josiah Belden and others, were the owners in fee, and entitled to the possession of the said premises, and every part thereof.

Wherefore, he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendant in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendant.

Dated San Francisco, December 28th, 1859.

Indorsed: Filed December 29th, 1859. Geo. Pen Johnston, clerk, by Cutler McAllister, deputy clerk.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendants, John Patterson and Benjamin Patterson, and made answer as follows, to wit:

Answer of John Patterson and Benjamin Patterson.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendants, John Patterson and Benjamin Patterson, for their separate answer to the complaint in the above entitled cause, say, that on the 8th day of November, 1859, or at any other time, the plaintiff was not the owner in fee, nor entitled to the possession, nor in possession of the premises described in the complaint, or any part thereof.

And for a further and separate defence and answer, the said defendants say, that at the time of the commencement of this suit the said defendants were not, nor are they now in the possession, nor did they then, nor do they now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: Commencing at a stake 5 chains, 36 links, S. 48° E. of O. B. Cottle's N.E. corner, thence N. 61 E. 30 chains, to a post, marked with 2 notches,

N.W. and S. E.; thence S. 48° 30′ E. 05 chains, to a stake; thence S. 38 W. 28 chains, 24 links, to a stake near a ravine; thence N. 48 W. 76 chains, 64 links, to the place of beginning, containing 199 1/10 acres.

And as to the said portion last above described, the said defendants admit, that at the time of the commencement of this suit, they were in the possession thereof; but they aver that they were in the sole and several possession of the said premises last above described, and did not hold the said possession jointly with any one or more of their co-defendants; and they deny that at the time of the commencement of this suit the plaintiff was the owner in fee, or entitled to the possession, or in possession of the premises last above described, or any part thereof; on the contrary, they aver that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, entitled to the possession of the said premises, and every part thereof, and were the owners in fee thereof; and whilst so the owners in fee and entitled to the possession of said premises, the said Houghton, Cobb, and Archer, as commissioners of the funded debt as aforesaid, afterwards, to wit, on the day of December, 1859, by their deed of that date, sold and conveyed to these defendants all their right, title, and interest as said board of commissioners, in and to the premises last above described; and by virtue of said conveyance these defendants became, and were and are the owners in fee, and entitled to the possession thereof.

And for a further and separate defence and answer, the said defendants say, that at the time of the commencement of this suit, they were not, nor are they now in possession, nor did they then, nor do they now claim to be entitled to the possession of any portion of the premises described in the complaint, except that portion thereof described and bounded as follows, to wit: Commencing at a stake 5 chains, 36 links, S. 48° E. of O. B. Cottle's N.E. corner; thence N. 61 E. 30 chains, to a post marked with 2 notches, N. W. and S. E.; thence S. 48° 30′ E. 05 chains, to a stake; thence S. 38 W. 28 chains, 24 links, to a stake near a ravine; thence N. 48 W., 76 chains, 64 links, to the place of beginning, containing 199 1/10 acres; of which portion the said defendants admit they were and are in possession; but they aver that their said possession was several and exclusive, and was not a joint possession with any one or more of their co-defendants; and they deny that at the time of the commencement of this suit, the plaintiff was the owner in fee, or entitled to the possession, or in possession of any portion of the premises last above described; on the contrary, they aver that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises,

and the said defendants are in the possession thereof with the license and consent of the said mayor and common council.

And for a further and separate defence and answer, the said defendants say, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary they aver, that at the time of the commencement of this suit, the mayor and common council of the city of San Jose were the owners in fee, and entitled to the possession of the said premises.

And for a further and separate defence and answer, the said defendants say, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, they aver, that at the time of the commencement of this suit, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, constituting the board of commissioners of the funded debt of the city of San Jose, were, as such commissioners, the owners in fee, and entitled to the possession of said premises, and every part thereof.

And for a further and separate defence and answer, the said defendants say, that at the time of the commencement of this suit, or at any time before then, the plaintiff was not, nor is he now the owner in fee, or entitled to the possession, or in possession of the premises described in the complaint, or any part thereof; on the contrary, they aver that at the time of the commencement of this suit, Isaac Branham and William L. Smith, in their own right, and as trustees for Josiah Belden and others, were the owners in fee, and entitled to the possession of the said premises, and every part thereof.

Wherefore, they pray that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendants in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendants.

Dated San Francisco, December 28th, 1859.

Indorsed: Filed, December 29, 1859. Geo. Pen Johnston, clerk. Cutler McAllister, d. c.

And afterwards, to wit, on the 29th day of December, in the year 1859, came the said defendant Trume Andrews, and made answer as follows, to wit:

Answer of Trume Andrews.

In the Circuit Court of the United States, for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

The defendant Trume Andrews, for his separate answer to the complaint in the above entitled cause, says:

That he denies each and every allegation in the said complaint contained.

Wherefore he prays that the plaintiff's complaint be dismissed, and for a judgment against the plaintiff for the costs by the said defendants in this behalf expended.

CROCKETT & CRITTENDEN,
Attorneys for Defendants.

Indorsed: Filed, December 29, 1859. George Pen Johnston, clerk. By Cutler McAllister, deputy clerk.

And afterwards, to wit, on the 2d day of January, in the year 1860, the following stipulation was filed in said cause, in words and figures as follows, to wit:

Stipulation to file Replications "nunc pro tunc."

Circuit Court of the United States for the Districts of California, Northern District.

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Answer.

It is hereby stipulated and agreed that defendants may file replications to each of the answers in this cause, at any time within ten days; and that such replication shall be deemed and taken for all purposes as having been filed this day, *nunc pro tunc.*

CROCKETT & CRITTENDEN,
Attorneys for Defendants.

31st December, 1859.

Indorsed: Filed, January 2d, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff Gustave Touchard, and filed a replication to the answer of the said defendant George Hellyer. The said replication being in words and figures as follows, to wit:

Replication to the Answer of George Hellyer.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff, to answer of the defendant George Hellyer (secondly), by him pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose or otherwise, were as said commissioners or in any way entitled to the possession of said premises in said answer named, or any part thereof, or owner or are the owners in fee, or of any legal estate therein or of any part thereof, or entitled to the possession thereof or of any part thereof; or that they, or either of them, as said commissioners or otherwise, at any time, by their deed or otherwise, sold or conveyed to the said defendant all their, or any, right, title, or interest as said board or otherwise, in or to said premises, or any part thereof, or that by virtue of said conveyance, or in any way, said defendant ever become, or was, or is the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly), above pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or any time since, the mayor and common council of the city of San Jose were the owners in fee or of any legal estate in or entitled to the possession of said premises in said answer named, or any part thereof; or that said defendant then was, or has been, or now is, in the possession thereof with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly) above pleaded, and for replication thereto says, that he denies that, at the commencement of this suit or at any time, the mayor and common council of the city of San Jose were the owners in fee or of any legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication thereto says, that he denies that at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose or otherwise, were or are the owners in fee or of any legal es-

tate in or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right or as trustees for Josiah Belden or others, or in any way were or have been or are owners in fee or of any legal estate in or entitled to the possession of said premises or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff Gustave Touchard, and filed a replication to the answer of the said defendant, James Singleton, the said replication being in words and figures as follows, to wit:

Replication to the Answer of James Singleton.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff, to the answer of defendant James Singleton (secondly), by him pleaded, and for replication thereto says, that he denies that at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose or otherwise, were, as said commissioners or in any way, entitled to the possession of said premises, in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein or of any part thereof, or entitled to the possession thereof or of any part thereof; or that they or either of them, as said commissioners or otherwise, at any time, by their deed or otherwise, sold or conveyed to the said defendant all their or any right, title, or interest, as said board or otherwise, in or to said premises or any part thereof; or that by virtue of said conveyance or in any way, said defendant ever became or was or is the owner in fee or of any other legal estate in the premises, or is entitled to the possession of said premises or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly) above pleaded, and for replication thereto says, that he denies that at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named, or any part thereof; or that said defendant then was, or has been, or now is in the possession thereof with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly) above pleaded, and for replication thereto says, that he denies that, at the commencemnt of this suit or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly) by him pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of said premises or any part thereof.

And plaintiff, to the answer of defendant (sixthly) above pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit or at any time, Isaac Branham and William L. Smith, or either of them, in their own right or as trustees for Josiah Belden or others, or in any way, were or have been or are owners in fee, or any legal estate in or entitled to the possession of said premises orany part thereof.

SAUNDERS & CAMPBELL and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff, Gustave Touchard, and filed a replication to the answer of the said defendant, William Quin: the said replication being in words and figures as follows, to wit:

Replication to the Answer of William Quin.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff, to the answer of defendant William Quin (secondly)

by him pleaded, and for replication thereto, says, that he denies that, at the time of the commencement of this suit or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose or otherwise, were, as said commissioners or in any way, entitled to the possession of said premises, in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof or of any part thereof; or that they or either of them, as said commissioners or otherwise, at any time, by their deed or otherwise, sold or conveyed to the said defendant all their or any right, title, or interest, as said board or otherwise, in or to said premises or any part thereof; or that by virtue of said conveyance or in any way, said defendant ever became or was or is the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly) above pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named, or any part thereof, or that said defendant then was, or has been, or now is, in the possession thereof, with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly) above pleaded, and for replication thereto, says, that he denies that, at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly) by him pleaded, and for replication thereto, says, that he denies that, at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were or are the owners in fee, or any legal estate in, or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly) above pleaded, and for replication thereto, says, that he denies that, at the time of the commencement of this suit, or at any time, Isaac Branham, and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden, or others, or in any way were, or have been, or are owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiffs.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff, Gustave Touchard, and filed a replication to the answer of the said defendant, Daniel McCray. The said replication being in words and figures as follows, to wit:

Replication to the Answer of Daniel McCray.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff, to answer of defendant, Daniel McCray (secondly), by him pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise were, as said commissioners, or in any way entitled to the possession of said premises in said answer named, or any part thereof, or owner, or are the owners, in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof, or of any part thereof; or that they, or either of them, as said commissioners, or otherwise, at any time by their deed, or otherwise sold or conveyed to the said defendant all their, or any right, title, or interest as said board, or otherwise, in or to said premises, or any part thereof, or that by virtue of said conveyance, or in any way, said defendant ever become, or was, or is, the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly) above pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named, or any part thereof, or that said defendant then was, or has been, or now is, in the possession thereof with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly) above pleaded, and for replication thereto, says that he denies that, at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal

estate in, the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly) by him pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly) above pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them in their own right, or as trustees for Josiah Belden, or others, or in way were, or have been, or are owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff, Gustave Touchard, and filed a replication to the answer of the said defendant, John Tully. The said replication being in words and figures as follows, to wit:

Replication to the Answer of John Tully.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff, to the answer of defendant, John Tully (secondly), by him pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were, as said commissioners, or in any way, entitled to the possession of said premises in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof, or of any part thereof; or that they, or either of

them, as said commissioners, or otherwise, at any time by their deed, or otherwise, sold or conveyed to the said defendant all their or any right, title, or interest, as said board, or otherwise, in or to said premises, or any part thereof; or that, by virtue of said conveyance, or in any way, said defendant ever become or was or is the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly), above pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in or entitled to the possession of said premises in said answer named, or any part thereof; or that said defendant then was, or has been, or now is, in the possession thereof, with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly), above pleaded), and for replication thereto, says, that he denies that at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were or are the owners in fee, or of any legal estate in or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden, or others, or in any way were, or have been, or are owners in fee, or of any legal estate in or entitled to the possession of said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff, Gustave Touchard, and filed a replication to the answer of the said defendant, Henrietta Bollman. The said replication being in words and figures as follows, to wit:

Replication to the Answer of Henrietta Bollman.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff, to the answer of defendant, Henrietta Bollman (secondly), by him pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were, as said commissioners, or in any way, entitled to the possession of said premises in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof, or of any part thereof; or that they, or either of them, as said commissioners, or otherwise, at any time by their deed, or otherwise, sold or conveyed to the said defendant all their or any right, title, or interest, as said board, or otherwise, in or to said premises, or any part thereof; or that, by virtue of said conveyance, or in any way, said defendant ever become, or was, or is the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly), above pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in or entitled to the possession of said premises in said answer named, or any part thereof; or that said defendant then was, or has been, or now is in the possession thereof, with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly), above pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of, said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden, or others, or in any way were or have been, or are owners in fee, or of any legal estate in, or entitled to the possession of, said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed, January 10, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff Gustave Touchard, and filed a replication to the answer of the said defendant Oliver Farnsworth. The said replication being in words and figures as follows, to wit:

Replication to the Answer of Oliver Farnsworth.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff, to the answer of defendant Oliver Farnsworth (secondly), by him pleaded, and for replication thereto, says that he denies that at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were, as said commissioners, or in any way, entitled to the possession of said premises, in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof, or of any part thereof, or that they, or either of them, as said commissioners or otherwise, at any time by their deed, or otherwise, sold or conveyed to the said defendant all their or any right, title, or interest, as said board or otherwise, in or to said premises, or any part thereof, or that by virtue of said conveyance, or in any way, said defendant ever become, or was or is the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly), above pleaded, and for replication thereto, says that he denies that, at the time of the commencemeet of this suit, or at any time since, the

mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named, or any part thereof, or that said defendant then was or has been, or now is in the possession thereof with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly), above pleaded, and for replication thereto, says that he denies that, at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden or others, or in any way were or have been, or are owners in fee, or of any legal estate, or entitled to the possession of said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed, January 10th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff, Gustave Touchard, and filed a replication to the answer of the said defendant, John Hassler. The said replication being in words and figures as follows, to wit:

Replication to the Answer of John Hassler.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff, to the answer of defendant, John Hassler (secondly),

by him pleaded, and for replication thereto, says that he denies that at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were, as said commissioners, or in any way, entitled to the possession of said premises, in said answer named, or any part thereof, or owner, or are the owners, in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof, or of any part thereof, or that they, or either of them, as said commissioners or otherwise, at any time by their deed, or otherwise, sold or conveyed to the said defendant all their, or any right, title, or interest as said board, or otherwise, in or to said premises, or any part thereof, or that by virtue of said conveyance, or in any way, said defendant ever become, or was, or is, the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly), above pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named, or any part thereof, or that said defendant then was, or has been, or now is, in the possession thereof with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly), above pleaded, and for replication thereto, says that he denies that, at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication hereto, says that he denies that, at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of, said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto, says that he denies that at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden, or others, or in any way were, or have been, or are owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 12th day of January, in the year 1860, came the said plaintiff, Gustave Touchard, and filed a replication to the answer of the said defendant, John W. Harnden. The said replication being in words and figures as follows, to wit:

Replication to the Answer of John W. Harnden.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff, to the answer of defendant, John W. Harnden (secondly), by him pleaded, and for replication thereto, says that he denies that at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were, as said commissioners, or in any way, entitled to the possession of said premises, in said answer named, or any part thereof, or owner, or are the owners, in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof, or of any part thereof; or that they, or either of them, as said commissioners, or otherwise, at any time by their deed or otherwise, sold or conveyed to the said defendant all their, or any right, title, or interest as said board, or otherwise, in or to said premises, or any part thereof, or that by virtue of said conveyance, or in any way, said defendant ever become or was, or is, the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly), above pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named, or any part thereof, or that said defendant then was, or has been, or now is, in the possession thereof, with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly), above pleaded, and for replication thereto, says, that he denies that, at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication thereto, says, that he denies that, at the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right or as trustees for Josiah Belden, or others, or in any way were or have been, or are owners in fee, or of any legal estate in or entitled to the possession of said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff, Gustave Touchard, and filed a replication to the answer of the said defendant, Peter McChristal; the said replication being in words and figures as follows, to wit:

Replication to the Answer of Peter McChristal.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants.
} Replication.

And plaintiff, to the answer of defendant, Peter McChristal (secondly), by him pleaded, and for replication thereto, says, that he denies that, at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were, as said commissioners, or in any way entitled to the possession of said premises in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof, or of any part thereof; or that they, or either of them, as said commissioners or otherwise, at any time by their deed, or otherwise, sold or conveyed to the said defendant all

their, or any right, title, or interest as said board or otherwise, in or to said premises, or any part thereof, or that, by virtue of said conveyance, or in any way, said defendant ever become, or was, or is the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly), above pleaded, and for replication thereto, says, that he denies that, at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named, or any part thereof, or that said defendant then was, or has been, or now is in the possession thereof with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly), above pleaded, and for replication thereto, says, that he denies that, at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication thereto, says, that he denies that, at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto, says that he denies that, at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden, or others, or in any way were or have been, or are owners in fee, or of any legal estate in, or entitled to the possession of said premises or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff, Gustave Touchard, and filed a replication to the answer of said defendant, John Patterson. The said replication being in words and figures as follows, to wit:

Replication to the Answer of John Patterson.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff to the answer of defendant, John Patterson (secondly), by him pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were, as said commissioners, or in any way, entitled to the possession of said premises in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof, or of any part thereof, or that they or either of them, as said commissioners, or otherwise, at any time, by their deed or otherwise, sold or conveyed to the said defendant all their or any right, title or interest, as said board or otherwise, in or to said premises, or any part thereof, or that by virtue of said conveyance, or in any way, said defendant become, or was, or is the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff to the answer of said defendant (thirdly), above pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named, or any part thereof, or that said defendant then was, or has been, or now is in possession thereof, with the license and consent of the said mayor and common council.

4. And plaintiff to the answer of said defendant (fourthly), above pleaded, and for replication thereto, says, that he denies that at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff to the answer of defendant (fifthly), by him pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise were or are the owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

And plaintiff to the answer of defendant (sixthly), above pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden, or others, or in any way were, or have been, or are owners in fee or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiffs.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff, Gustave Touchard, and filed a replication to the answer of the said defendant, Joseph Aubrey. The said replication being in words and figures as follows, to wit:

Replication to the Answer of Joseph Aubrey.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff to the answer of defendant, Joseph Aubrey (secondly), by him pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were, as said commissioners, or in any way, entitled to the possession of said premises in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof or of any part thereof; or that they, or either of them, as said commissioners, or otherwise, at any time by their deed or otherwise, sold or conveyed to the said defendant all their, or any, right, title or interest as said board, or otherwise, in or to said premises, or any part thereof, or that by virtue of said conveyance, or in any way, said defendant ever become, or was, or is, the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff to the answer of said defendant (thirdly), above pleaded, and for replication thereto, says that he denies that at the time of the commencement of this suit, or at any time since, the

mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named, or any part thereof, or that said defendant then was, or has been, or now is in the possession thereof, with the license and consent of the said mayor and common council.

4. And plaintiff to the answer of said defendant (fourthly), above pleaded, and for replication thereto says, that he denies that at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden or others, or in any way were, or have been, or are owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff, Gustave Touchard, and filed a replication to the answer of the said defendant, Benjamin Patterson, the said replication being in words and figures as follows, to wit:

Replication to the Answer of Benjamin Patterson.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants.
} Replication.

And plaintiff, to the answer of defendant, Benjamin Patterson

(secondly), by him pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were, as said commissioners, or in any way entitled to the possession of said premises in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof, or of any part thereof; or that they, or either of them, as said commissioners, or otherwise, at any time by their deed, or otherwise, sold or conveyed to the said defendant all their, or any right, title, or interest as said board, or otherwise, in or to said premises, or any part thereof, or that by virtue of said conveyance, or in any way, said defendant ever became, or was, or is the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly), above pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in or entitled to the possession of said premises in said answer named, or any part thereof, or that said defendant then was, or has been, or now is in the possession thereof with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly), above pleaded, and for replication thereto says, that he denies that, at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden or others, or in any way were, or have been, or are owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff, Gustave Touchard, and filed a replication to the answer of the said defendant, Orval B. Cottle; the said replication being in words and figures as follows, to wit:

Replication to the Answer of Orval B. Cottle.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff, to the answer of defendant, Orval B. Cottle (secondly), by him pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were, as said commissioners, or in any way, entitled to the possession of said premises in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof, or of any part thereof; or that they, or either of them as said commissioners, or otherwise, at any time by their deed, or otherwise, sold or conveyed to the said defendant all their, or any right, title, or interest as said board, or otherwise, in or to said premises, or any part thereof, or that by virtue of said conveyance, or in any way, said defendant ever become, or was, or is the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly), above pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named, or any part thereof, or that said defendant then was, or has been, or now is in the possession thereof with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly), above pleaded, and for replication thereto, says, that he denies that at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any

legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either, or any of them, as the board of commissioners of the funded debt of the city or San Jose, or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden, or others, or in any way were, or have been, or are owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiffs.

Dated, San Francisco, January 7th, 1860.

Indorsed: Filed January 10th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 12th day of January, in the year 1860, came the said plaintiff, Gustave Touchard, and filed a replication to the answer of the said defendant, Robert Thompson; the said replication being in words and figures as follows, to wit:

Replication to the Answer of Robert Thompson.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff, to the answer of defendant, Robert Thompson (secondly), by him pleaded, and for replication thereto, says, that he denies that at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were as said commissioners, or in any way entitled to the possession of said premises, in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein, or any part thereof, or entitled to the possession thereof, or of any part thereof, or that they,

or either of them as said commissioners, or otherwise, at any time by their deed, or otherwise, sold or conveyed to the said defendant all their, or any right, title, or interest as said board, or otherwise, in or to said premises, or any part thereof, or that by virtue of said conveyance, or in any way said defendant ever become, or was, or is the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly), above pleaded, and for replication thereto says, that he denies that at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named or any part thereof, or that said defendant then was, or has been, or now is in the possession thereof with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly), above pleaded, and for replication thereto says, that he denies that at the commencement of this suit or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication thereto says, that he denies that at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto says, that he denies that at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden or others, or in any way were or have been, or are owners in fee, or of any legal estate in, or entitled to the possession of said premises or any part thereof,

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10th, 1860, Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff, Gustave Touchard, and filed a replication to the answer of the said defendant, Edmund Ladd.

The said replication being in words and figures as follows, to wit:

Replication to the Answer of Edmund Ladd.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } Replication.

And plaintiff, to the answer of defendant Edmund Ladd (secondly), by him pleaded, and for replication thereto says, that he denies that at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise were, as said commissioners, or in any way entitled to the possession of said premises, in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof, or of any part thereof, or that they or either of them, as said commissioners or otherwise, at any time by their deed or otherwise, sold or conveyed to the said defendant all their or any right, title, or interest, as said board or otherwise, in or to said premises or any part thereof, or that by virtue of said conveyance, or in any way, said defendant ever become, or was, or is the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly), above pleaded, and for replication thereto says, that he denies that at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named, or any part thereof, or that said defendant then was, or has been, or now is in the possession thereof with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly), above pleaded, and for replication thereto says, that he denies that at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication thereto says, that he denies that at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any

of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto says, that he denies that at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden or others, or in any way were, or have been, or are owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10th, 1860, Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plaintiff Gustave Touchard, and filed a replication to the answer of the said defendant John A. Cottle. The said replication being in words and figures as follows, to wit:

Replication to the Answer of John A. Cottle.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als. defendants. } Replication.

And plaintiff, to the answer of defendant John A. Cottle (secondly), by him pleaded, and for replication thereto says, that he denies that at the time of the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were, as said commissioners, or in any way entitled to the possession of said premises, in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof, or of any part thereof; or that they or either of them, as said commissioners or otherwise, at any time by their deed or otherwise, sold or conveyed to the said defendant all their or any right, title, or interest, as said board or otherwise, in or to said premises, or any part thereof, or that by virtue of said conveyance, or in any way, said defendant ever become, or was, or is the owner in

fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly), above pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named, or any part thereof, or that said defendant then was, or has been, or now is in the possession thereof with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly), above pleaded, and for replication thereto says, that he denies that, at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden or others, or in any way were, or have been, or are owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed, January 10th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the 10th day of January, in the year 1860, came the said plantiff Gustave Touchard, and filed a replication to the answer of the said defendant, Mickle McWelch, the said replication being in words and figures, as follows, to wit:

Replication to the Answer of Mickle McWelch.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als. defendants. } Replication.

And plaintiff, to the answer of defendant Mickle McWelch (secondly), by him pleaded, and for replication thereto, says, that he denies that, at the commencement of this suit, or at any time since, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were, as said commissioners, or in any way, entitled to the possession of said premises, in said answer named, or any part thereof, or owner, or are the owners in fee, or of any legal estate therein, or of any part thereof, or entitled to the possession thereof, or of any part thereof; or that they or either of them, as said commissioners or otherwise, at any time by their deed or otherwise, sold or conveyed to the said defendant all their or any right, title, or interest, as said board or otherwise, in or to said premises, or any part thereof, or that by virtue of said conveyance, or in any way, said defendant ever become, or was or is the owner in fee, or of any other legal estate in the premises, or is entitled to the possession of said premises, or any part thereof.

3. And plaintiff, to the answer of said defendant (thirdly), above pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or at any time since, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in, or entitled to the possession of said premises in said answer named, or any part thereof, or that said defendant then was, or has been, or now is in the possession thereof, with the license and consent of the said mayor and common council.

4. And plaintiff, to the answer of said defendant (fourthly), above pleaded, and for replication thereto says, that he denies that, at the commencement of this suit, or at any time, the mayor and common council of the city of San Jose were the owners in fee, or of any legal estate in the premises therein set forth, or of any part thereof, or entitled to the possession thereof.

And plaintiff, to the answer of defendant (fifthly), by him pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or at any time, Sherman O. Houghton, James C. Cobb, and Lawrence Archer, or either or any of them, as the board of commissioners of the funded debt of the city of San Jose, or otherwise, were or are the owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

And plaintiff, to the answer of defendant (sixthly), above pleaded, and for replication thereto says, that he denies that, at the time of the commencement of this suit, or at any time, Isaac Branham and William L. Smith, or either of them, in their own right, or as trustees for Josiah Belden, or others, or in any way were, or have been, or are owners in fee, or of any legal estate in, or entitled to the possession of said premises, or any part thereof.

SAUNDERS & CAMPBELL, and
HALL McALLISTER,
Attorneys for Plaintiff.

Dated San Francisco, January 7th, 1860.

Indorsed: Filed January 10th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the twenty-third day of February, in the year one thousand eight hundred and sixty, being the day set for the trial of said cause, at the court-house aforesaid at San Francisco, before the court aforesaid, the following proceedings were had in said cause, and duly entered of record, to wit:

Proceedings in Court.

Cause brought on for Trial.

GUSTAVE TOUCHARD
v.
JAMES SINGLETON et als. } At Common Law.

And now at this day come the parties hereto by their respective attorneys, and the jurors heretofore impanelled and sworn herein, and the trial of the said cause is proceeded with; whereupon a motion to admit certain evidence was argued by the attorneys for the respective parties, and C. T. Ryland, Peter O. Minor, and S. O. Houghton, were duly sworn and examined on behalf of the defendants, and there not being time to conclude the said trial, the same was continued until to-morrow, Friday, the 24th day of February inst., at 11 o'clock, A.M.

And afterwards, to wit, on the twenty-fourth day of February, in the year last aforesaid, before the said court, the following further proceedings were had in said cause, to wit:

Proceedings in Court.

GUSTAVE TOUCHARD,
v.
JAMES SINGLETON et al. } At Common Law.

And now at this day come the parties hereto by their respective attorneys, and the jurors heretofore impanelled and sworn herein,

and the trial of the said cause was proceeded with; and thereupon R. C. Hopkins was duly sworn and examined on behalf of the defendants, and Richard Tobin was duly sworn as interpreter, and Guillermo Castro, and William R. Davis, were duly sworn and examined on behalf of the defendants. There not being time to conclude the said trial, the same was continued until to-morrow, Saturday, the 25th day of February inst., at 11 o'clock, A.M.

And afterwards, to wit, on the twenty-fifth day of February, in the year last aforesaid, at the court-house aforesaid, before the said court, the following further proceedings were had in said cause, to wit:

Proceedings in Court.

GUSTAVE TOUCHARD
v.
JAMES SINGLETON et al. } At Common Law.

And now at this day, this cause having been continued from yesterday, come the parties by their respective attorneys, and the jurors heretofore impanelled and sworn herein, and the trial of the said cause was proceeded with; whereupon, H. W. Kalleck, James W. Weeks, and Thomas Campbell, were duly sworn and examined on behalf of the defendants. There not being time to conclude, the trial of the said cause is continued until Monday next, the 27th day of February inst., at 11 o'clock A.M., and the jurors aforesaid are dismissed until then.

And afterwards, to wit, on the twenty-seventh day of February, in the year last aforesaid, at the court-house aforesaid, before the said court, the following further proceedings were had in said cause, to wit:

Proceedings in Court.

GUSTAVE TOUCHARD
v.
JAMES SINGLETON et al. } At Common Law.

And now at this day, come the parties hereto by their respective attorneys, and the jurors heretofore impanelled and sworn herein, and the trial of the said cause is proceeded with; and thereupon Juan C. Galindo was sworn and examined on behalf of the defendant, and Juan B. Alvarado, was duly sworn and examined on behalf of the plaintiff; the testimony was then closed on both sides, and the opening argument for plaintiff made by Hall McAllister, Esq. There not being time to finish, the said cause is continued until to-morrow, Tuesday, February 28th, at 10 o'clock A.M.

And afterwards, to wit, on the twenty-eighth day of February, in

the year last aforesaid, at the court-house aforesaid, before the said court, the following further proceedings were had in said cause, to wit:

Proceedings in Court.

GUSTAVE TOUCHARD
v.
JAMES SINGLETON et al. } At Common Law.

And now at this day come the parties hereto by their respective attorneys, and the jurors heretofore impanelled and sworn herein, and the trial of the said cause is proceeded with. J. B. Crockett, Esq., argued the cause on behalf of the defendants, and Campbell, Esq., closed on behalf of the plaintiff; whereupon the jury were charged by the judge and retired to their room, in charge of the proper officer, to consult upon their verdict.

And now at this day come the jurors aforesaid into court, and through their foreman do say,—

"Gustave Touchard, plaintiff, *v.* James Singleton and others, defendants. We, the jury, hereby find a verdict in the above-entitled cause in favor of the plaintiff and against the defendants, Mickle McWalsh and Trume Andrews, for the premises described in the complaint; and we do further find in favor of the plaintiff and against the defendants, James Singleton, Daniel McCray, William Quin, John A. Cottle, John Tully, Oliver Farnsworth, Robert Thompson, Joseph Aubrey, Peter McCristal, George Hillyer, John W. Herndon, Edmund Ladd, Orval B. Cottle, John Hassler, and Henrietta Bollman, for the respective portions of the premises described in the complaint, which are set forth respectively in their several answers; and we do further find in favor of the plaintiff and against the defendants, John Patterson and Benjamin Patterson, for that portion of the premises described in the complaint, which are set forth in their separate answer, but would respectfully state, that this verdict is found under the strict and positive instructions from the court in regard to the legal effect of the respective titles.

"JAMES DOWS,
"Foreman.

"SAN FRANCISCO, February 28, 1860."

And thereupon the said jurors were discharged from further attendance. And now at this day, on motion of the attorney for defendants, it is ordered, that further proceedings in this cause, other than the entry of the judgment, be stayed for twenty days.

And, on the second day of March, in the year one thousand eight hundred and sixty, judgment was entered in said cause in words, terms, and figures as follows, to wit:

Judgment.

United States of America, State of California.

In the Circuit Court of the United States for the Districts of California, in and for the Northern District of said State.

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants. } At Common Law.

Judgment in Ejectment.

This cause being at issue, and having been regularly tried on the issues of law and fact therein, before the Hon. M. Hall McAllister, the judge of this court, and a jury duly impanelled and sworn on the twenty-first day of February, A.D. 1860, Messrs. Hall McAllister and Campbell appearing as attorneys for the plaintiff, and Mr. Crockett for the defendants, and having been, after the evidence was closed, duly submitted to the jury, and the verdict of the jury having been duly rendered and entered thereafter, viz., on the twenty-eighth day of February, A.D. 1860, whereby the said jury find in favor of the plaintiff and against the defendants, Mickle McWelch and Trume Andrews, for the premises described in the complaint; and also find in favor of the plaintiff and against the defendants, James Singleton, Daniel McCray, William Quin, John A. Cottle, John Tully, Oliver Farnsworth, Robert Thompson, Joseph Aubrey, Peter McCristal, George Hellyer, John W. Herndon, Edmund Ladd, Orval B. Cottle, John Hassler, and Henrietta Bollman, for the respective portions of the premises described in the complaint, which are set forth respectively in their separate answers; and also find in favor of the plaintiff and against the defendants, John Patterson and Benjamin Patterson, for that portion of the premises described in the complaint, which are set forth in their separate answer.

Now, therefore, upon motion of the attorneys for the plaintiff, it is hereby ordered, adjudged, and decreed, that Gustave Touchard, plaintiff, do have and recover of and from Mickle McWelch and Trume Andrews, defendants, the possession of the premises described in the complaint in this action as follows:

All that certain tract of land situated in the county of Santa Clara and State of California, being a portion of the rancho known by the name of the "Yerba Buena Rancho," and bounded and described as follows: commencing at a point bearing, with an easterly variation of fifteen degrees and thirty minutes, north forty-seven and one-half degrees west of a blazed oak tree in the "Portezuelo de las Animas," and distant therefrom two hundred and ten chains and sixty-eight links; thence running, with the same variation, the following courses: north forty-seven and one-half degrees west, through a lake called

the "Laguna Seca," four hundred and eighty-three chains; thence south sixty-five degrees west, one hundred and fourteen chains and forty links, to the "Coyote creek;" and thence up and along said creek, and following its meanderings, to a point opposite the southernmost base of the hill called "Loma Lagrimas;" and thence, in a straight line, south eighty-seven degrees east, two hundred and twenty-two chains, to the place of commencement, which said land is situated in the Northern District aforesaid.

And it is further order, adjudged and decreed that Gustave Touchard, plaintiff, do have and recover of and from James Singleton, defendant, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendant herein, as follows:

All that certain tract or parcel of land lying about five miles easterly from the city of San Jose, in the county of Santa Clara, State of California, and bounded and described as follows: commencing at a stake standing in the bed of the Coyote creek, a sycamore tree eighteen inches in diameter bearing north from said stake one chain distant, said stake standing at the southwest corner of O. W. Farnsworth's land; thence along said creek upwards, south 42° east 20.20 chains, to a stake; thence north 50° east 74.50 chains, to a white oak two feet in diameter; thence north 36° west 19.00 chains, to a stake at the southeast corner of O. W. Farnsworth's land; thence south 48° 15′ west 77.73 chains, along said Farnsworth's line, to the place of beginning; which said land is situate in the northern district of California.

And it is further ordered, adjudged and decreed that Gustave Touchard, plaintiff, do have and recover of and from Daniel McCray, defendant, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendant herein, as follows: commencing at a stake at the northeast corner of land claimed by one John Tully, and at the east corner of land claimed by Edmund Ladd; thence south 36° east 38 chains, 45 links, to a stake marked with two notches, at the northwest corner of F. H. Farnsworth's land; thence north 64° east 17 chains, 70 links, to a stake marked with a figure 3; thence north 47° 30′ west 43 chains, 10 links to a post in a fence marked with four notches; thence south 47° 30′ west 9 chains and 55 links to the place of beginning, containing 54 $\frac{91}{100}$ acres; the above courses are true and not magnetic; which said land is situated in the county of Santa Clara, northern district of California.

And it is further ordered, adjudged and decreed that Gustave Touchard, plaintiff, do have and recover of and from William Quin, defendant, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendant herein, as follows:

Commencing at the southwest corner of Edward Ladd's land, about

three miles southeasterly from the city of San Jose; thence north 48° west 60 chains, 73 links, to the southeast corner of John Tully's land; thence south 50° west 64 chains, 19 links, to a county road; thence south 49° 45′ east with said road 59 chains; thence north 51° 30′ east 62 chains, 50 links, to the place of beginning, containing 373 $\frac{45}{100}$ acres, and being known as 500 acre lot No. 7 (seven); which said land is situated in the county of Santa Clara, northern district of California.

And it is further ordered, adjudged and decreed that Gustave Touchard, plaintiff, do have and recover of and from John A. Cottle, defendant, the possession of those portions of the premises described in the complaint in this action, which are set forth and described in the separate answer of said defendant herein, as follows:

All that certain tract or parcel of land lying about five miles easterly from the city of San Jose, in the county of Santa Clara, State of California, and bounded and described as follows, to wit: commencing at a stake, at the northeast corner of lot No. 3, of the 500 acre lots, and running thence south 36° 53′ east 39.30 chains; thence north 34° 35′ east, 61.04 chains; thence south 0.40′ west, 45.61 chains; thence south 36° 19′ west, 63.50; thence north 53° 07′ west, 25.31 chains, to the place of beginning; also the following described tract of land lying in said county and adjoining the above described tract on the west, bounded as follows:

Commencing at a stake at the northeast corner of lot No. 3 of the 500 acre lots, and running thence south 53° east 371.17 yards; thence south 35° west 868 yards; thence north 60 west 373.34 yards; thence north 35 east 893 yards, to the place of beginning. All the above courses are magnetic. Which said lands are situate in the northern district of California.

And it is further ordered, adjudged, and decreed, that Gustave Touchard, plaintiff, do have and recover of and from John Tully, defendant, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendant herein, as follows:

Commencing in the Coyote creek, where the southern line of William Quinn's land crosses the same; thence up said creek, following its meanderings thus: S. 24 E. 16 chains; thence S. 11 E. 27 chains; thence S. 49 E. 11 chains, 50 links, to a corner of a fence on the east side of said creek; thence north 43° 20′ E. 42 chains, 50 links, to a stake marked 22, which stands at the corner of four fences; thence N. 37 W. 59 chains, 75 links, to the southeast corner of said Quinn's land, where three fences corner; thence S. 51 W. 35 chains, with the line of said Quinn's land, to the place of beginning; containing two hundred and thirty-six and $\frac{48}{100}$ acres: the above courses are true, and not magnetic; which said land is situate in the county of Santa Clara, northern district of California.

And it is further ordered, adjudged, and decreed, that Gustave

Touchard, plaintiff, do have and recover of and from Oliver Farnsworth, defendant, the possession of those portions of the premises described in the complaint in this action, which are set forth and described in the separate answer of said defendant herein, as follows:

Commencing at a stake in the channel of the Coyote creek, a sycamore tree eighteen inches in diameter, bearing north 50 links distant; thence north 48° east 77.73 chains, to a stake; thence north 33 west 21 chains, to a stake marked S. & W., and standing on the southern line of 500 acre lot, number fifty-three; thence south 50° 15′ west 88.50 chains, along the line of said lot, to a stake on the bank of said creek; thence along said creek upwards south 62° 30 east 5.00 chains; thence south 49° east 5.00 chains; thence south 75° east 10 chains; thence south 47° east 4.70 chains, to the place of beginning. Also, that other certain lot or parcel of land, lying north of the above-described tract and adjoining it, bounded as follows, to wit: commencing at a stake marked D., from which an oak bears south 78° east magnetic, and running thence north 60° west 186.66 yards; thence north 35° east 868 yards; thence south 53° east 185.58 yards, to a stake at the southeast corner of lot No. 3, and the southwest corner of lot No. 53 of the 500 acre lots; thence south 53°, west 868 yards, to the place of beginning: the courses of the first tract above-described are true, and those of the second tract are magnetic; which said parcels of land are situated in the county of Santa Clara, northern district of California.

And it is further ordered, adjudged, and decreed, that Gustave Touchard, plaintiff, do have and recover of and from Robert Thompson, defendant, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendant herein, as follows:

Commencing at a stake at the corner of J. Singleton's land, running thence S. 45° E. 14.80 chains, to a stake; thence south 48° W. 79.25 chains, to a stake in the bed of the Coyote creek; thence N. 18° W. 10 chains; thence N. 40° W. 8.15 chains, to a stake at the S. W. corner of J. Singleton's land; thence N. 50° E. 74.50 chains, to the place of beginning, containing $127\frac{37}{100}$ acres, which said land is situate in the county of Santa Clara, northern district of California.

And it is further ordered, adjudged, and decreed, that Gustave Touchard, plaintiff, do have and recover of and from Joseph Aubrey, defendant, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendant herein, as follows:

Bounded as follows: Commencing at a stake standing in the bed of the Coyote creek, at the S. W. corner of John Bonner's land; thence along said creek S. 21 E. 13.00 chains; thence S. 55 E. 17.33 chains; thence N. 55 E. 45.36 chains; thence N. 48° W. 37

35 chains, to a stake; thence S. 48° W. along the line of John Bonner's land 39.25 chains, to the place of beginning; containing $148\frac{35}{100}$ acres, which said land is situate in the county of Santa Clara, northern district of California.

And it is further ordered, adjudged and decreed, that Gustave Touchard, plaintiff, do have and recover of and from Peter McChristal, defendant, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendant herein, as follows:

Commencing at the N. W. corner, at a sycamore 5 feet in diameter, marked with 3 notches on two sides, N. and E., standing on the E. bank of the Coyote creek, the same being the S. W. corner of Michael Welch's claim; thence running N. 83 E. 6 chains, 10 links, to a red rock 2 feet face on the side of a white oak 3 feet in diameter, marked with 3 bazes S. side; thence S. 31 E. 24 chains, to a stake marked with three notches on one side, standing in a bottom; thence S. 41 W. 18 chains, 50 links, to a stake, from which a sycamore 7 inches in diameter bears N. 20 links distant; thence N. 62 west, with the meanders of the Coyote creek 12 chains; thence N. 21 W. 14 chains, 75 links; thence N. 35 E. 17 chains, 25 links, to the beginning; which said land is situate in the county of Santa Clara, northern district of California.

And it is further ordered, adjudged, and decreed, that Gustave Touchard, plaintiff, do have and recover of and from George Hellyer, defendant, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendant herein, as follows:

Commencing at an oak tree marked T, standing on the east side of the Coyote creek, and running thence S. 11° 05′ E. 4.20 chains to the east bank of the said creek; thence along up said creek to an oak tree standing on a rocky bluff, and marked T, said last-mentioned tree being distant from the said first-mentioned tree, in a straight line, 39.40 chains; thence N. 78° 55′ E. 19.99 chains; thence N. 11.05 W. 39.40 chains; thence S. 78° 55′ W. 19.99 chains, to the place of beginning; which said land is situate in the county of Santa Clara, northern district of California.

And it is further ordered, adjudged, and decreed, that Gustave Touchard, plaintiff, do have and recover of and from John W. Herndon, defendant, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendant herein, as follows:

All that certain tract and parcel of land situate in said county of Santa Clara, about six miles southeasterly from the city of Jan Jose, described as follows: Commencing at a stake notched on two sides, which stands at the N. W. corner of Mrs. H. Bollman's land; thence running N. 63 E. 41 chains, 50 links, to a gate-post marked with two notches; thence N. 23 W. 23 chains, 25 links, to a stake with

two notches, one on each side; thence S. 13 W. 13 chains, 25 links, to the centre of the road, witness tree, a white oak 14 inches in diameter, bearing S. 19 links distant, marked with 2 notches; thence N. 75 W. 39 chains, 88 links, to a corner in the middle of a lane; thence S. 13 W. 5 chains, 70 links, to a stake marked with six notches, at the corner of a fence; thence S. 50 W. 3 chains, 25 links, to a stake marked with six notches; thence S. 33 E, with the line of O. W. Farnsworth's and J. Singleton's land, 36 chains and 31 links, to the place of beginning, being 120 $\frac{1}{100}$ acres: the above courses are true, and not magnetic; which said land is situate in the northern district of California.

And it is further ordered, adjudged, and decreed, that Gustave Touchard, plaintiff, do have and recover of and from Edmund Ladd, defendant, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendant herein, as follows:

Commencing at the N. E. corner of the lands occupied by W. Quinn, and at the N. E. corner of the land of John Tully, running thence N. 50° E. 60.70 chains, to a stake standing at the N. W. corner of land occupied by Daniel McCray; thence S. 87° 20′ W. 39.18 chains; thence S. 50° 40′ W. 35.07 chains; thence S. 48° E. 29.40, to the place of beginning, containing 137 acres; which said land is situated in the county of Santa Clara, northern district of California.

And it is further ordered, adjudged, and decreed, that Gustave Touchard, plaintiff, do have and recover of and from Orval B. Cottle, defendant, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendant herein, as follows:

All that certain tract or parcel of land lying about five miles easterly from the city of San Jose, in the county of Santa Clara, State of California, bounded and described as follows: commencing at a stake at the northeast corner of Joseph Aubrey's land, a white oak, four feet in diameter, bearing N. 44° E. 1.50 chains distant; thence N. 48° E., along the line of said Bonner, 40 chains, to a stake, a live oak tree two and one-half feet in diameter, bearing S. 50 W. 62 links distant; thence S. 48 E. 40 chains, to a stake; thence S. 48° west, 40 chains; thence N. 48° W. 40.15 chains, to the place of beginning, which said land is situate in the northern district of California.

And it is further ordered, adjudged, and decreed, that Gustave Touchard, plaintiff, do have and recover of and from John Hassler, defendant, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendant herein, as follows:

All that certain tract and parcel of land situate in the said county of Santa Clara, bounded and described as follows: commencing at a

stake, standing in a ravine on a line of the land of J. and B. Patterson, N. 38 E. 8 chains, 24 links, from J. and B. Patterson's southwest corner; thence S. 48 E. 42 chains, 50 links, to a stake on the east side of a hill; and a live oak stump, 10 inches in diameter, 2 feet high, stands W. 6 links distant, blazed on the east side; thence N. 39 E. 39 chains, 75 links, to a stake with one notch on two sides, S. W. and N. W., at a corner of a fence from which a witness tree, a white oak 2 feet in diameter, bear S. 5 E. 10 links distant; thence N. 48 W. 43 chains, to a stake marked with one notch on three sides, N. W., S. W., and S. E., at a corner of a fence, being the S. E. corner of J. and B. Patterson's land; thence S. 38 W. on a line of J. and B. Patterson's land 40 chains, to the place of beginning; containing $169\frac{62}{100}$ acres. The above courses are true, and not magnetic, which said land is situated in the northern district of California.

And it is further ordered, adjudged, and decreed, that Gustave Touchard, plaintiff, do have and recover of and from Henrietta Bollman, defendant, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendant, herein, as follows:

All that certain parcel of land situate in the said county of Santa Clara, about six miles southeasterly from the city of San Jose, described as follows: beginning at a stake, marked with a notch on two sides, at the S. W. corner of J. W. Herndon's lands; thence running N. 63 E. 48 chains, 20 links, to a stake in a ravine; thence up said ravine, with the following meanderings, S. 32 E. 4 chains, E. 8 chains, 75 links; thence S. 15 E. 3 chains, 50 links; thence S. 68 E. 2 chains, 50 links; thence S. 37 E. 16 chains; thence S. 5 W. 7 chains, to a stake at the corner of a fence; thence N. 53 W. 11 chains, 40 links, to a stake at N. E. corner of J. and B. Patterson's land; thence S. 61 W. 45 chains, 9 links, to a stake at the corner of a fence on Cottle's line; thence N. 48 W. 5 chains, 36 links, to the N. E. corner of O. B. Cottle's land; thence N. 45 W. 14 chains, 80 links, to the N. E. corner of S. Bonner's land; thence N. 32 W. 5 chains, 10 links, to the place of beginning; containing $135\frac{10}{100}$ acres. The above courses are true and not magnetic, which said land is situate in the northern district of California.

And it is further ordered, adjudged, and decreed, that Gustave Touchard, plaintiff, do have and recover of and from John Patterson and Benjamin Patterson, defendants, the possession of that portion of the premises described in the complaint in this action, which is set forth and described in the separate answer of said defendants herein, as follows:

Commencing at a stake 5 chains, 36 links, S. 48° E. of O. B. Cottle's N. E. corner; thence N. 61 E. 30 chains, to a post marked with 2 notches, N. W. and S. E.; thence S. 48° 30′ E. 05 chains,

to a stake; thence S. 38 W. 28 chains, 24 links, to a stake near a ravine; thence N. 48 W. 76 chains, 64 links, to the place of beginning; containing 199$\frac{1}{10}$ acres, which said land is situate in the county of Santa Clara, northern district of California.

And it is hereby further ordered, adjudged, and decreed, that Gustave Touchard, plaintiff, do have and recover of and from Mickle McWelch, Trume Andrews, James Singleton, Daniel McCray, William Quin, John A. Cottle, John Tully, Oliver Farnsworth, Robert Thompson, Joseph Aubrey, Peter McChristal, George Hellyer, John W. Herndon, Edmund Ladd, Orval B. Cottle, John Hassler, Henrietta Bollman, John Patterson, and Benjamin Patterson, the sum of five hundred and thirty-six dollars and sixteen cents, for the costs and disbursements of the plaintiff expended and incurred in this action, as the same are taxed. Judgment rendered and entered this 2d day of March, A.D. 1860.

M. HALL McALLISTER,
Judge Circuit Court U. S., District of California.

Indorsed: Filed March 2d, 1860. Cutler McAllister, clerk.

I certify the foregoing to be the judgment roll in the case of Gustave Touchard *v.* James Singleton et al., March 2, 1860.

CUTLER McALLISTER,
Clerk.

And afterwards, to wit, on the eleventh day of April, in the year 1860 aforesaid, came the defendants aforesaid by their attorneys, Crockett & Crittenden and L. Archer, and filed their bill of exceptions in the cause aforesaid, which said bill is in words, terms, figures, and indorsements as follows, to wit:

In the Circuit Court of the United States, for the Districts of California, in and for the Northern District.

JAMES SINGLETON and others, plaintiffs in error,
v.
GUSTAVE TOUCHARD, defendant in error.

Crockett & Crittenden and L. Archer, attorneys for plaintiff in error.

Saunders & Campbell and H. McAllister, attorneys for defendants in error.

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Bill of Exceptions.

In the Circuit Court of the United States for the Districts of California, Northern District, *ss.*

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et als., defendants.

Be it remembered, that on the trial of the above entitled cause, the plaintiff put in evidence to the jury a patent from the United States to Antonio Chaboya, which patent, it was admitted, embraced the land in controversy in this cause, and was for six square leagues of land. The said patent (omitting the calls and field-notes of the survey recited therein) is in the words and figures following, to wit:

The United States of America. To all to whom these presents shall come, greeting:

Whereas, it appears from a duly authenticated transcript filed in the General Land Office of the United States, that pursuant to the provisions of the act of Congress approved the third day of March, one thousand eight hundred and fifty-one, entitled "An act to ascertain and settle the private land claims in the State of California," Antonio Chaboya, as claimant, filed his petition on the 9th day of March, 1852, with the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco; in which petition he claimed the confirmation of his title to a tract of land situated in the county of Santa Clara, and known by the name of Yerba Bueno or Socayre, said claim being founded on possession by permission of the authorities of the municipality of San Jose de Guadalupe, as recognized and decreed by Don Jose Figueroa, Governor of California, on the 25th of November, 1833. And whereas, the board of land commissioners aforesaid, on the 17th day of October, 1854, rendered a decree of confirmation in favor of said claimant, which decree or decision was, on appeal, affirmed by the District Court of the United States for the Northern District of California, at a stated term, on the 21st day of January, 1858, and the said court did order, adjudge, and decree that the title of the said claimant to the land described in said transcript is valid, and the same is hereby confirmed to the extent and quantity of six square leagues. The land of which confirmation is hereby made, is that on which said Chaboya resides, known by the name of 'Yerba Buena' or 'Socayre,' situated in Santa Clara county, and bounded and described as follows, to wit:

Bounded on the south by the 'Puerto suelo de las Animas,' on the north by the land of Mr. Joaquin Higuera, and the dry lagoon of the pueblo of San Jose Guadalupe, on the east by the top (cuchilla)

of the adjoining hills; and on the west by the rancho of the Beruales and the Punta del Robla, in the vicinity of Coyote creek; containing six square leagues, provided said quantity of six square leagues be contained within said boundaries; and if there be less than said quantity of six square leagues within said boundaries, then such less quantity is hereby confirmed to the said claimants. Reference for more particular description to be had to the grant, and the map thereto attached on file in this case." And whereas, it further appears from a certified transcript on file in the General Land Office that a stipulation having been entered into between the United States attorney and the attorney for the claimant that no further appeal would be taken on the part of the United States in this case, the aforesaid District Court, at a stated term on the 8th day of October, 1858, "ordered that claimant have leave to proceed under the decree of this court heretofore rendered in his favor, as under final decree."

And whereas, under the 13th section of the said act of 3d March, 1851, there having been presented to the commissioners of the General Land Office a plat and certificate of the survey of the tract of land confirmed as aforesaid, authenticated on the 19th day of November, 1858, by the signature of the surveyor-general of the public lands in California, which plat and certificate are in the words and figures following, to wit:

Now know ye, that the United States of America, in consideration of the premises, and pursuant to the provisions of the act of Congress aforesaid of 3d March, 1851, have given and granted, and by these presents do give and grant, unto the said Antonio Chaboya, and to his heirs, the tract of land embraced and described in the foregoing survey; but with the stipulation that in virtue of the 15th section of the said act, the confirmation of this said claim and this patent "shall not affect the interests of third persons."

To have and to hold the said tract with the appurtenances unto the said Antonio Chaboya, and to his heirs and assigns, forever, with the stipulation aforesaid.

In testimony whereof, I, James Buchanan, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, this third day of January, in the year of our Lord one thousand eight [L. S.] hundred and fifty-nine, and of the independence of the United States the eighty-third.

By the President,

JAMES BUCHANAN.

By T. J. ALLBRIGHT,
Secretary.

J. N. GRANGER,
Recorder of the General Land Office.

Recorded, vol. 2, page 26 to 41, inclusive. Ex. I. In.

District Court of the Third Judicial District of the State of California, in and for the County of Santa Clara.

At the March Term of said court, Hon. Samuel Bell McKee, judge, 1859.

On motion of William Mathews, counsel for Gustave Touchard, an owner of the rancho hereinafter named, and on due proof to the court that public notice of the time and place of making this application was given, by publishing the same in the "San Jose Telegraph," a weekly newspaper printed and published in the said county of Santa Clara, on the twenty-third day of March, 1859; and on producing and submitting to the court for its inspection the within and annexed patent for lands lying within the said county of Santa Clara, and known as the rancho "Yerba Buena," or "Socayre," the exterior limits or boundaries of which said rancho are as follows, to wit: bounded on the south by the "Puertosue lo de la Animas;" on the north by the land of Mr. Joaquin Higuera, and the dry lagoon of the pueblo of San Jose Guadalupe; on the east by the top (cuchilla) of the adjoining hills; and on the west by the rancho of the Beruales, and the Punta del Robla, in the vicinity of Coyote creek. Which patent purports to have been issued by the government of the United States to Antonio Chaboya, on the 3d day of January, of the present year, eighteen hundred and fifty-nine. And the court being satisfied on the inspection thereof that the said within and annexed patent is genuine,

It is therefore ordered by the court, in conformity with the act of the legislature of the State of California, passed April 29th, 1857, entitled "An act concerning certified copies of certain instruments in writing," that the within and annexed patent be, and the same is hereby declared to be genuine in all respects, and entitled to record under and by virtue of said act, and that this order be indorsed upon or annexed to the said patent, under the seal of the said court, and an entry of the same made in the minutes of this court.

Dated San Jose, March 30th, 1859.

[L. S.] SAM. BELL McKEE,
District Judge.

Attest, JOHN R. HEWSON,
Clerk.

Filed for record, at request of William Mathews, at 9¾ o'clock A.M., April 16th, A.D. 1859.

AUSTIN M. THOMPSON,
Recorder Santa Clara Co.

By F. FRANK GRANT,
Deputy.

Recorded in book "A." of Patents, on pages 7 to 12, inclusive. Records of Santa Clara County.

AUSTIN M. THOMPSON,
County Recorder.
By F. FRANK GRANT,
Deputy.

The plaintiff then put in evidence several mesne conveyances in due form from the said patentee to the plaintiff, for the land described in the complaint; which, it was admitted, had the effect to vest in the plaintiff, prior to the commencement of this suit, all the right, title, and interest of the said patentee, whether derived from the said patent or otherwise, in and to the lands described in the complaint.

The plaintiff then proved that the defendants McWelch and Trume Andrews, at the time of the commencement of this suit occupied, each of them, a portion of the premises described in the complaint. This was all the proof on behalf of the plaintiffs.

The defendants then put in evidence properly certified transcripts of the following documents, to wit:

1st. A petition by the mayor and common council of the city of San Jose to the board of United States land commissioners for the adjudication of private land claims in California.

2d. The decree of the said commissioners on the said claim.

3d. A notice that the said claimants appealed from said decree to the District Court.

4th. A decree of the said District Court confirming the said claim.

5th. An order of the said court setting aside the said decree.

6th. An order of the said court vacating the said last-named order, and affirming the former decree rendered by said court, which documents are in the words and figures following:

Petition.

State of California, *ss.*

To the United States commissioners for the adjudication of private land claims in the State of California:

The petition of the mayor and common council of the city of San Jose respectfully showeth, that on the twenty-ninth of November, in the year 1777, there was established in what is now known as the valley of San Jose, within the limits of the present county of Santa Clara, in the State of California, by Señor Don Philip Neve, then the governor of the Province of Upper California, thenceforth known as the pueblo of San Jose Guadalupe,

That at the time of the establishment of the said pueblo, Upper California was chiefly inhabited by wild and savage tribes of Indians,

and it was the policy of Spain, to which the said province then belonged, to foster and encourage new settlements of civilized people, both because such new settlements tended to augment the general welfare, and to support and to sustain the missions then recently established in California for the conversion and civilization of the Indian tribes.

That in accordance with this policy, instructions were given by the viceroys to the governors of the said province, touching the establishment of pueblos within the same. That the pueblo of San Jose Guadalupe was established by competent authority, will fully appear by reference to the communication addressed by Bareby y Ursula, the viceroy of the king of Spain, to Senor Don Philip Neve, the governor of California, under date of the 22d of July, 1778, a certified copy of which is hereunto filed as part of this petition, marked Exhibit "A," and a translation thereof marked Exhibit "B.;" and also by reference to a communication under date of the 19th July, 1779, from E. Cove De Croix, the commanding-general of the province, to the governor of California, inclosing to the said governor a certified copy of a royal order of the 6th March, 1779, approving in express terms of the establishment of the said pueblo. Certified copies of the said communication and of the said royal order are herewith filed as part of this petition, marked respectively "Exhibit C." and "Exhibit D.," and a translation of said documents marked "Exhibit E."

The establishment of said pueblo is again distinctly recognized in the communication from the said commanding General de Croix to Senor Reveray Moneada, commander of recruits, under date of December 27th, 1779, a certified copy of which is herewith filed as part of this petition, marked "Exhibit F.," and a translation thereof marked "Exhibit G.," and also in a communication from the same officer under date of the 7th February, 1780, to Don Martin de Mayorgeo; a certified copy of which is herewith filed as part of this petition, marked "Exhibit H.," and a translation thereof marked "Exhibit J."

If further evidence of the establishment of said pueblo be needed, it may be found in a communication from the said De Croix to the governor of California, under date of the 10th of February, 1780; a certified copy of which is herewith filed as part of this petition, marked "Exhibit K.," and a translation thereof marked "Exhibit L."

Your petitioners further show, that the said pueblo was established and founded at the periods aforesaid, in accordance with the laws, usages, and customs of Spain at that time in force in the then province of California, and in conformity with the royal regulations and decrees for the establishment and government thereof.

They further show, as hereinafter set forth, that the founding and establishment of the said pueblo was expressly sanctioned by the royal authority of the king of Spain, and was in all respects in con-

formity with the laws and usages of Spain relating to the establishment of such infant settlements.

Your petitioners further show, that one of the chief objects of the government in the establishment of pueblos of California, was to encourage agriculture and the breeding of cattle, and in the then condition of the Spanish government was best to be promoted by the founding of pueblos or villages, granting to the inhabitants thereof, for their common use, extensive tracts of land as pasturage for their cattle.

That in pursuance of this policy, there was granted by the governor of California to the said pueblo, or the inhabitants thereof, for their common use, at the time of the establishment thereof, an extensive tract of land around and contiguous to the said pueblo, to be used as pasture grounds for their cattle, and to be reserved solely for that purpose.

That breeding of cattle was then the chief and almost the only business in which the inhabitants of Upper California were engaged, and it was from their herds that their means of subsistence were principally derived.

That as the inhabitants resided chiefly in pueblos and villages, it was indispensable, not only to their peace and comfort, but to their very existence, that extensive pasture lands, for their common use, should be assigned to the inhabitants of these pueblos or villages.

That in view of the necessity, the government of Spain made liberal grants of land to all pueblos in California for these purposes, and there was accordingly granted by the governor of California, as is hereinafter stated, to the said pueblo of San Jose de Gaudalupe, a large tract of land as a pasture lot for the common use of the inhabitants.

The particular boundaries and descriptions of the said tract so granted will be made fully appear by the different documents hereinafter particularly described and set forth.

Your petitioners further show, that the original boundaries of the said commons or pasture lands, as defined at the time of the founding of the said pueblo were as follows, to wit: Beginning at a live oak which formerly stood on the bank of the river Guadalupe at its embarcadero; thence in a northeasterly direction two leagues, eight hundred and seventy-three varas, to a live oak, the said line passing four hundred and ten varas south of the house of the citizen Jose Higuera; thence in a southeasterly direction, passing across or through the place known as the "Los Buellas," "Pala," "San Felipe," "Los Animas," to the arroyo de los Llagas; thence in a westerly direction with the said arroyo de los Llagas two leagues eight hundred and seventy-three varas; thence in a northwesterly direction, to a live oak, on the coast range of mountains, about midway between the arroyo de los Llagas in a northeasterly direction, to the place of beginning; the length of the eastern line of the said survey

being about eleven and a half leagues, and the length of the northern and southern lines being each about two leagues eight hundred and seventy-three varas.

Your petitioners further show, that these were the ancient boundaries, and defined as such at the time of the founding of the said pueblo, and notoriously recognized as such ever since, except as to the western boundary line, which divides the lands of the said pueblo from those which appertain to the mission of Santa Clara, concerning which last-mentioned line there have been some disputes between the inhabitants of said pueblo and the reverend padres of the said mission, as far back as the year 1800. These disputes had grown to be of so serious a character as to demand the interposition of the viceroy of New Spain, and accordingly in that year, Don Senor Magresua, the viceroy, in communication with the provisional governor of California, informed him that he (the viceroy) had decided that, for the future, the river Guadalupe should serve as the boundary or dividing line between the pueblo and the mission, leaving to the said pueblo part of the mountain that lies along the coast, and which is on the other side of the dividing river, and in order that they may have a provision of timber and wood; and directing the said provisional governor, for the purpose of preventing these disputes in future, to designate by suitable landmarks and fixed monuments, that part of the said mountain or coast which should be assigned to said pueblo.

In pursuance of this authority, Don Josef Arguello, the said provisional governor of California, in conjunction with Friar Martin de Laudartes, appointed for that purpose by the Reverend Juan, president of the said mission, proceeded to set apart for the use of the said pueblo a portion of the said mountain; all of which, together with the part thus designated, will appear by reference to a report of the said Arguello, under date of the 24th July, 1801, which is herewith filed as part of this petition, marked "Exhibit M.," and a translation thereof, marked "Exhibit N."

These proceedings, however, did not put an end to said disputes; on the contrary, the said dividing line continued to be a subject of controversy between the said pueblo and mission up to the year 1809, as will appear from the official documents herewith filed as a part of the petition, marked Exhibit "O.," and translation thereof, marked Exhibit "P.," and other like documents herewith filed as part hereof, marked Exhibit "Q.," and a translation thereof, marked Exhibit "R."

Long subsequent to this period, however, and after Mexico, or New Spain, including California, had revolted from the crown of Spain, and established itself as an independent republic, to wit, in the year 1837, doubts, it appears, still existed as to the precise boundaries of the said pueblo lands; and several persons in the year last aforesaid having applied to the ayuntamiento, or town council of

the said pueblo, for permission to occupy in severalty certain portions of what the inhabitants deemed to be common or pasture lands of the said pueblo, Manuel Pinto, and other inhabitants of the said pueblo, on the 21st day of December, 1837, presented to the said ayuntamiento their remonstrance against the said proceedings, claiming that said lands belonged to the inhabitants in common, and not to be occupied in severalty, and praying that proper steps be taken to ascertain definitely the boundaries of the said lands, and that the same be designated by fixed monuments, so that there might be no dispute.

In pursuance of his duty in that behalf, Juan Alvarez, the alcalde of the said pueblo, and the presiding officer of the said ayuntamiento, on the 23d day of December, 1837, transmitted the said petition to Juan B. Alvarado, the then provisional governor of the department of Upper California, with a request that he would cause the boundaries of the common lands of the said pueblo to be distinctly ascertained and marked.

On the following day, to wit, on the 24th of December, 1837, the said provisional governor, by his official decree of that date, addressed to the said alcalde, required the said ayuntamiento to appoint a commission of its own members, or of other persons, for the purpose of making a plan or map of the lands to be laid out as the legal endowment of the pueblo, first obtaining the proper information in regard to the neighboring estate, and with the most accurate description of the distances and name of owner, and the springs, groves, &c., contained therein.

In accordance with the said decree, the said ayuntamiento, on the 20th of March, 1838, appointed a commission for the purpose aforesaid, consisting of Guillermo Castro, Guillermo Yulmac, and Salvio Pacheco, who, being duly sworn, organized themselves into a commission in the most formal manner on the 22d day of March, 1838, and proceeded in the discharge of their duties.

On the twenty-fifth day of the same month they went in person upon the said ground with a view to ascertain the said boundaries, and having made an actual survey thereof, they designated and fixed the said boundaries according to the ancient monuments and landmarks then found existing on the said land, and which were recognized and pointed out by the ancient inhabitants as the true and just boundaries of the said pueblo lands, commencing at a live oak, two leagues eight hundred and twenty-three varas, in a northeasterly direction, passing through the Sierra, or range of mountains, which are called "Los Buellos," "Pala," "San Felipe," "Los Animas," and "Aguages de las Llagas." The length of the said line was about eleven and a half leagues; and at each end of the said line, and in the middle of the place called the "Pala," they caused to be erected the corresponding landmarks of stone in a substantial manner. Returning to the beginning point, they proceeded to run the

northern line of said tract in accordance with what was acknowledged to be the lands belonging to the aforesaid pueblo.

From the said beginning point the said northern line was run by said commissioners in a southeasterly direction two leagues eight hundred and seventy-three varas to the last live oak that was then to be seen on the bank of the river Guadalupe, at its embarcadero; said line passing four hundred and ten varas south of the house of Jose Higuera.

The said commissioners also ascertained and decided the southern boundary of said tract to be the Arroyo de las Llagas; the length of the said southern line being equal to the length of the northern line, to wit, two leagues eight hundred and seventy-three varas, commencing at the southern end of the eastern line of said tract, and running thence in a westerly direction with the said Arroyo de las Llagas the distance aforesaid, to wit, two leagues eight hundred and seventy-three varas.

In ascertaining the western boundary of the said tract, the proceedings of the said commissioners are involved in some confusion, but your petitioners insist that the said line as established by said commissioners, and which your petitioners claim was in fact the true line, was as follows, to wit:

Beginning at the live oak aforesaid, on the bank of the river Guadalupe, at its embarcadero; thence in a southwesterly direction to a live oak on the Coast Range of mountains, about midway between the mission of Santa Clara and the Arroyo de las Llagas; and thence in a southeasterly direction to the western terminus of the south line of said tract, as hereinbefore described.

Having concluded the said survey, and ascertained the said boundaries as aforesaid, the said commissioners caused a map or diagram of the same to be made, exhibiting the said boundaries truly and accurately as ascertained by them; which map, together with their report in writing, they transmitted, in the said month of March in the year 1838, to the ayuntamiento of the said pueblo; and in their said report it is stated that they had ascertained the dividing line between the said pueblo and the said mission of Santa Clara to be much further towards the west than it had then recently been reported to be, and they direct proper monuments to be established to designate the true line; all of which will more fully appear by reference to a certified copy of the said proceedings, herewith filed as a part of this petition, marked "Exhibit S.," and a translation thereof, marked "Exhibit T."

Your petitioners further show that, at the date of said survey, there were many old inhabitants of the said pueblo who were perfectly familiar with the ancient boundaries of the said lands, and that the said commissioners were themselves inhabitants of the said pueblo, who from their infancy had known the said lands, and were well acquainted with the local and visible monuments of which said

boundaries were designated. They insist, therefore, that the said survey thus made under the authority of the governor of California, and with the consent of the ayuntamiento of the said pueblo, is conclusive of the extent and boundary of the said pasture lands or commons of the said pueblo.

Your petitioners further show that on and for many years prior to the 7th day of July, 1846, the said pueblo, or village of San Jose de Guadalupe, existed on the said tract, and so continued to exist up to and after the date of the treaty of Guadalupe Hidalgo. That from the foundation of the said pueblo, in the year 1777, up to the present time, the tract of land hereinbefore described has been notoriously known and recognized as the commons or pasture ground of the said pueblo; and on the 27th of March, in the year 1850, by an act of that date, entitled "An Act to incorporate the city of San Jose," the legislature of the State of California incorporated your petitioners by the name of and style of the mayor and common council of the city of San Jose; and by the twenty-third section of the same act it is provided in substance that your petitioners shall succeed to all the legal rights and claims of the pueblo of San Jose, and shall be subject to all the liabilities incurred and obligations created by the ayuntamiento of said pueblo, provided that said corporation shall not exericse municipal authority over any of said pueblo lands not embraced in the boundaries of the said city, except to rent, lease, or sell the same; all of which will appear by reference to said act, which is referred to as part of this petition.

By virtue of which act your petitioners claim they have succeeded to all the rights, titles, and interest, of the said pueblo and ayuntamiento, in and to the said lands, and that the same of right belong to your petitioners; wherefore, they pray that they may be confirmed in their title thereto by your honorable board, so that a patent may issue to them in pursuance of law.

Your petitioners further state, that they have understood that several persons pretend to claim some portions of said land by virtue of pretended grants from certain persons claimed to have been governors of California; but your petitioners are ignorant of the names of these claimants, nor do they know what particular portions of said tract the several claimants pretend are covered by their alleged grants; but your petitioners aver, that if there be any such pretended grants, they are either simulated and fraudulent, or if genuine are wholly null and void; the said governors having no authority in law to grant away the lands of said pueblo.

If it should hereafter appear that any such claims shall be preferred before your honorable board, your petitioners pray that they may be allowed to intervene in the said claims, and thus prevent the title to said lands from being clouded by fictitious and groundless claims.

They pray for all such general and equitable relief in the premises as the ends of justice may require, and as their cause may demand.

JOHN WILSON,
Attorney for Petitioners.

THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN JOSE
v.
THE UNITED STATES.

In this case, it is adjudged by the commission that the claim of the petitioners for so much of the land described in their petition as is hereinafter particularly described is valid, and it is therefore hereby decreed that the same be confirmed; and as to the claim of the said petitioners to the portion of land described in their petition, and not embraced in the limits hereinafter described, it is adjudged that their claim for the same is not valid, and their application for a confirmation thereof is rejected.

The land of which confirmation is hereby made is situated in the county of Santa Clara, containing four square leagues of land, and is bounded on the north and south by two parallel lines, each two leagues in length, and running due east and west, and on the east and west sides by two parallel lines, each two leagues in length, and running due north and south; said boundary lines being so drawn that their respective centres shall be in a direction due north, south, east, and west, from the centre of the Plaza of the city of San Jose, and each at the distance of one league from the same, excepting such portion of said area as is situated on the side of the river Guadalupe, opposite to said city, and making said river the boundary line on that side of said area instead of the line above described.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARNELL.

In the District Court of the United States, Northern District, State of California.

MAYOR AND COMMON COUNCIL OF THE CITY OF SAN JOSE
v.
THE UNITED STATES.

You will please take notice, that it is the intention of the above named claimants to prosecute an appeal in the above entitled cause

to this court, from the decision of the board of United States land commissioners, rejecting their claim.

JOHN WILSON,
Attorney for Appellants.

To SAMUEL W. INGE, Esq.,
U. S. District Attorney.
And JOHN A. MONROE, Esq.,
Clerk of said Court.

Indorsed: Filed April 4th, 1860. John A. Monroe, clerk, by W. H. Chevers, deputy.

At the stated term of the District Court of the United States of America for the Northern District of California, held at the court room in the city of San Francisco, on the sixth day of August, in the year of our Lord one thousand eight hundred and fifty-nine,

Present, the Honorable Ogden Hoffman, jr., district judge.

THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN JOSE
v.
THE UNITED STATES.

Appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California.

The claimants claim the land included within the boundaries of the former pueblo of San Jose de Guadalupe, according to its ancient boundaries, and the cause having been heard upon appeal from the decision of the commissioners aforesaid, upon the transcript of the proceedings before the said commissioners, their decision and the papers and evidence on which said decision was founded, and the same having been argued by the district attorney on behalf of the United States, and by F. M. Haight and Joseph B. Crockett, on behalf of the claimants representing the said pueblo, and due deliberation being thereupon had. The said court in pursuance to the laws of Congress in that case made and provided, doth order, judge, and determine, that the claim of the claimants to the land included within the ancient limits of the said pueblo of San Jose be confirmed to said claimants or their legal representatives, according to the ancient boundaries of said pueblo, as ascertained by the orders and decrees of the former governments of California, the map and surveys in evidence, and the testimony of witnesses in the case as set forth in the said transcript of the proceedings of the said commissioners sent to this court.

It is further ordered, adjudged, and decreed by the said District Court that the boundaries of the said claim being the same with those of the former pueblo of San Jose shall be ascertained and

surveyed as follows: Beginning at a point in the woods at a live oak tree in the dividing line between said pueblo and what were formerly known as the lands of the mission of San Jose, and if said tree is gone, where the same was in March, 1838, running thence a southeast course which passes through the mountains which are called Las Buellas, Pala, San Felipe, Las Animas, and Aguas de Las Llagas to a monument of stone erected in March, 1838, and having reference to all the landmarks on this line, and to the monuments of stone in the middle of the Pala; this line is in length eleven and one-half leagues, and its southern termination the southeast corner of the ancient limits of the said pueblo and of the land hereby confirmed to the claimants. Then commencing again at the point first mentioned, being the said live oak tree or its former situation, and running a line from the northeast by east to southwest by west to the embarcadero of the Guadalupe to the last live oak which is seen on the bank of the river Guadalupe, or where the same was in March, 1838, being two leagues and eight hundred varas for the length of this line, and the same passing near the house formerly occupied by Jose Higuera, and distant from it four hundred and ten varas, the house being on the northerly side of this line. Thence up the river Guadalupe to its source, and thence running with a line corresponding with the course of said river, as near as may be, and which is nearly from southeast to northwest, and having reference to monuments of stone formerly placed on this line, the last of which and the termination of this line was placed on the apex of a little hill, which is at the foot of the mountain called "Parage de las Capitancillos," including part of the oak grove, now or formerly at this place, and including all the willow grove, now or formerly at the source of the said river; thence from said point at the foot of said mountain de las Capitancillos to the creek called Las Llagas, at or near its source, and at such point as will make the distance from where said line strikes said creek to the southeastern point before ascertained the same length as the distance from the starting-point in the survey to the embarcadero, that is two leagues eight hundred varas, thence from said point last ascertained to the southeastern corner of the said tract before ascertained.

In making the survey and ascertaining the preceding lines, reference will be had to the survey and map of the boundaries of said pueblo made by the commissioners, Castro, Gulwac, and Salvio Pacheco, in March, 1838, and to the survey of Jasef Arguello, under date of the twenty-fourth day of July, 1801, signed also by the Friar Martin de Serudeto and Jose Miguel Asuna, and to the documents and depositions in the cause as to the ancient boundaries of said pueblo of San Jose.

OGDEN HOFFMAN,
District Judge.

District Court of the United States for the Northern District of California.

THE UNITED STATES
v.
THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN JOSE.
No. 419, D. C.
" 286, L. C.

This day came on to be heard the motion of the United States to set aside the decree heretofore made in this cause at this term, and for a rehearing, and it being inconvenient for the court to hear and decide upon said motion before the close of this term, and for the counsel of the mayor and common council of the city of San Jose now to argue, and said counsel consenting hereto,

It is ordered that the enrolment of the said decree be suspended, that the decree be set aside, and the cause be restored to the calendar for a rehearing, with leave to both parties to introduce further evidence, and with leave to the counsel of the mayor and common council of the city of San Jose at the next term to move to vacate this order, said motion by consent of counsel now given in open court to be heard and decided in like manner as this motion for a rehearing, and upon the papers now filed, and such other papers as either party may present.

OGDEN HOFFMAN,
U. S. Dist. Judge.

December 2d, 1857.

Indorsed: Filed December 3d, 1857. John A. Monroe, clerk, by J. Edgar Grymes, deputy.

At a stated term of the District Court of the United States of America for the Northern District of California, held at the court-house in the city of San Francisco, on Saturday, the 26th day of November, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Ogden Hoffman, district judge.

THE MAYOR AND COMMON COUNCIL, CITY OF SAN JOSE,
v.
THE UNITED STATES.
No. 419.

An order having heretofore been entered in this cause, on the 2d day of December, 1857, setting aside the decree of confirmation rendered in the said cause on the 6th day of August, 1857, in which order it was specified that the claimants might move to set the same aside; and in pursuance of the said leave, the claimants having, on the 24th day of May, 1858, moved the court to vacate and set aside

the said order of the 2d December, 1857, and the said motion having been duly argued by counsel and submitted to the court, and the court being now fully advised in the premises, it is ordered, adjudged, and decreed, that the aforesaid order, entered on the 2d day of December, 1857, setting aside the decree of confirmation and ordering a rehearing in the said cause, be and the same is hereby vacated and set aside; and it is further adjudged, ordered, and decreed that the said decree of confirmation entered on the 6th day of August, 1857, stand as valid, and the same is hereby ratified in all things, and shall have the like effect as if the same had not been vacated as hereinbefore recited.

OGDEN HOFFMAN,
United States District Judge.

Dated at San Francisco, 26 November, 1859.

And the defendants at the same time proved that the said decree of the District Court embraced the lands described in the complaint.

The defendants then put in evidence certain documents in the Spanish language, which, it was admitted, formed a portion of the archives of the former Spanish and Mexican governments in California, and which archives are now in the possession and custody of the surveyor-general of the United States for California, and translations of which documents into the English language are as follows:

In your letter of the 15th of April last, you informed me that, with nine soldiers in the cultivation of the soil from the company at the presidio, and that of the port of San Francisco, five founders of a pueblo (pobladores) and one servant, numbering with their families eighty persons, you founded, on the 27th day of November, of the year last past, the pueblo of San Jose de Guadalupe, near the headwaters of the river of the same name, distant 26 leagues from said presidio, sixteen from that to of San Francisco, and ¾ of a league from the mission of Santa Clara; having divided out to each founder the house, lots, lands, and cattle, which is authenticated by the list which you forward me along with said letter, with the intention of making use of the waters of the river Guadalupe by means of a draw, so as to afford the means of irrigation and cultivation to such an extensive tract of level plain as will justify an increase of the share of the actual founders, and of those who may hereafter become citizens, and to agree to the pueblo the full extent of commons (ejidos) and pasture lands covered with timber that it is designed she should have.

This, in addition to the other information which you communicated to me, has afforded me the highest satisfaction on account of the advantages to flow from the foundation, the result of which is apparent that, within two years, as you promised, the crops will be sufficient not only to support said presidio, but also that of San Francisco, which will result in a considerable saving to the royal treasury, the

increase of the population of these establishments, and the extension of the Catholic religion among the numerous heathen who inhabit these countries.

God preserve you many years.

El Rd. W. S. HELO. BARCLAY,
y Ursula.

Mexico, 22d of July, 1778.

To Senor Don Phillip Neve, Monterey.

To the Commanding General:

In the instructions which relate to the political government and population of California, in title 14 of the new regulations of that peninsula, approved by his majesty in the royal ordinance of the 24th of October, 1781, it is described in the 8th article that the new founders shall enjoy in common the use of the waters, pasture, wood, and timber of the commons, the groves, and pastures covered with timber, which is in accordance with the laws, are to be marked off to each pueblo; and moreover, that each one shall enjoy the right to the pasture of his undivided lands, with the provision that each founder in future shall not have more than fifty head of cattle of his own; in this manner the land may be distributed among all, and that the true wealth of the pueblos may not be monopolized by a few individuals.

In the fifth and following laws of title 6, book 4th, of the recapitulation of these kingdoms, it is decreed that the use of all the pastures, forests, and waters of the provinces of the Indies shall be common to all the inhabitants of the same, in order that they may all enjoy the free use of them for their cattle, repealing wherever it may be necessary whatever ordinance may conflict therewith; and the provision extends, not only to the woods, pastures, and waters in the grants made to the lords in the kingdom, but also as well to the lands sold and estates leased which, when the crops are harvested, shall remain as pastures for the common use of all.

The designation of tracts (sitios) for the raising of cattle, which some founders of pueblos, of California, ask for, and the governor recommends in his official communication of the 20th November, 1784, I cannot, nor ought I permit to be done within the boundaries assigned to any pueblo, which according to law 6th, title 5, book 4, of the Recopitacion, ought to be four leagues of territory, either in a square or elongated, according to the nature of the land, the object of the application of these new pobladores being to make themselves absolute owners of the forests, pastures, waters, timber, wood, and other advantages of these tracts (sitios) which may be granted, leased, or divided among them, and to deprive their fellow-citizens of these benefits, which pretension it will be at once seen is plainly at variance with the provisions of said law, and to the provisions contained in art. 8 of the instructions in regard to the settlement of Cali-

fornia, according to which all the waters, pastures, wood, and timber within the limits which by law are assigned to each pueblo, shall be enjoyed in common, in order that the whole population may have the benefit of them, and may use them for the support of their cattle, and share whatever other advantage may arise from the same.

The laws 1 to 13 inclusive, letter 12, of the same book 4, authorize the designation and division of peoneas (caballerias), and tracts (sitios), cattle, farms (estancias), for large cattle and small cattle, provided they be granted at a distance from the Indian pueblos and their cultivated grounds, and that the owners of the same, or the interested, may delegate themselves to keep a sufficient number of herdsmen or guards to prevent the cattle from doing any injury to the Indians, and to give them satisfaction for such as they may actually do them, the granting of the aforesaid tracts (sitios), cattle farms (estancias), contributing to the increase of the population of California, when from the abundance of land and the extent of pastures, there are the most ample means of so doing without injury to the Indians or other third parties, and where for the want of active commerce, consumption, and export of the productions, the breeding and increase of cattle must decidedly constitute the principal source of the wealth of the pueblos.

From these considerations, it seems to me you are authorized, if you deem proper, to grant and order that instructions be sent to the governor of California, Don Pedro Fages, to have marked out immediately to each new pueblo the extent of four leagues, with the proper survey and monuments, in a square or elongation, as the nature of the case will admit of, and within which limits there shall not be granted, leased, or divided out any tract or farm for raising cattle to any citizen or founder, as all the forests, pastures, waters, and other advantages and to remain for the common use and enjoyment of all the citizens and pobladores, so that no person shall have the sole and exclusive ownership of them; and as regards the lands lying without the said limits and district assigned to each pueblo (tract) sitios may be granted or leased for farms (estancias) for the raising of cattle, at such a distance that no injury will result to the missions, pueblos, or Indians' villages, nor to their cultivated grounds, with the express provisions that the citizens or pobladores to whom they are granted shall obligate themselves to keep a sufficient number of herdsmen and guards to prevent damages, and to indemnify for any that by chance may occur, and that no one citizen or founder shall hold more than three locations (sitios) or tracts (asuntes), binding himself to build on each one a storehouse, and to place on it at the least 2000 head of cattle. Notwithstanding the leases or grants, the pastures shall remain for the common use and benefit, and when there are no herds, (sitios) tracts may be granted for the plantations and farms in the manner and as prescribed by the laws 12, title 12, and those referring to the island of Hispaniola, law 5, title 17, book 4, of the

recopitacion of these kingdoms, which said conditions and laws shall be stated in a separate clause in the deeds of gift which shall be made, so that being made known to the citizens and pobladores who obtain them, they may be aware of the obligations for the execution of which they are bound, and that they may have no just motive or pretext in the future to allege any right to do otherwise. You will decree, notwithstanding, after all as you may deem best.

GALINDO NAVARRO.

CHIHUAHUA, 27th of October, 1785.

By a royal order, a certified copy of which I inclose to you, the king has been pleased to approve of the erection of a new pueblo on the banks of the river Guadalupe, and in compliance with his instructions, I give you the most particular injunction careful (to see to it) that this establishment shall not prejudice the adjoining mission.

God preserve you many years.

EL. CARL. DE CROIX.
ANTONIO BORRILLA.

PUEBLO DE NOMBRADO DERES, 19th July, 1779.

Pedro Galindo Navarro to the Senor Governor of California:

The king has received the information communicated by your letter of the 23d of September last, numbered 271, that the governor of California, Don Felipe Neve, has established a new pueblo of fifteen citizens on the banks of the river Guadalupe, with other information contained in the documents which it incloses. His majesty has been pleased to give this act his approval, and desires that you should charge particularly on the said Governor Neva that he should see to it that the new pueblo shall aid and not prejudice the adjacent mission.

God preserve you many years.

JOSEPH DE GALVEZ.

To SENOR DON TEODORA DE CROIX.

EL PARDO, 6th of March, 1779.

For the just purpose of the defence, preservation, and protection of the province of the Californias, in which the service of God and the king are especially interested, I have concluded upon the occupation of the channel of Santa Barbara by the presidio of that name, and three missions, the erection of a pueblo with the title of "La Puna de Los Angeles," on the river Porcumbela, and his majesty has approved the one which I ordered to be established on the banks of the river Guadalupe, called San Joseph.

In order to insure the most complete success to these new important establishments, the senor governor of that province, Don Felipe Neve, deemed it necessary and has asked for your presence in the court, and I having cheerfully consented thereto, the occasion has

arrived for you to bring into exercise your zealous performance of the duties prescribed by the accompanying instructions.

They consist in the advantageous recruiting of the families and soldiers for California, so that this province may not suffer any serious injury in its sparse population, and in the valuable increase and necessary stock of mules, horses, mares, and other things that old and new establishments of the peninsula require.

You are therefore, with consideration, and a preference to everything else, to charge yourself with the arrangements I have made; and do make known to you, before setting out from the capital, and afterwards, during the period you are exercising your commission, the doubts and difficulties that present themselves to you, in order that I may clear them up and overcome them.

In article 14 of the instructions, I say to you that you must not deceive the recruits by offering them more than they are to receive; and for further explanation, I call to your attention that the recruits for the pueblos are to receive for the monthly pay of ten dollars, and the customary daily rations, for the definite period of three years, to be counted from the day of the enrolment; to each one are to be given two cows, two oxen, two mares, two horses, one mule, two sheep, two goats, and the necessary implements and utensils for the cultivation of the soil; and then all this assistance, as well as the clothing and mountings which they now receive, are to be reimbursed to the royal treasury (with the exception of the expense of the monthly pay and rations), out of the sale of fruits, grain, and the raising of cattle, in such a manner that there may be sufficient for the proper subsistence; and that the aforesaid just reimbursement shall be made.

The recruits for the troops, as they enjoy a fixed and better pay, are governed by distinct rules, shall pay out of their property by reasonable instalments the expenses they occasion for their actual enrolment and that of their families, cavalry equipments, arms, provisions, and cavalry horses.

The false reports which the common people have circulated in relation to the regulations of the service in California, leading to be believed that the greatest losses are sustained by reason of the drawback and discount taken from the pay of the officers, troops, and inhabitants of pueblos, will deter many from taking advantage of the opportune occasion which is now presented to them to obtain an honorable and happy establishment, and to do a long service to the king, which will meet in all respects his sovereign pleasure and just recompense.

In order to dissipate the injurious impressions, it is necessary that you should exercise all your prudence, and manage, even in the smallest details, in accordance with truth and sincerity, which are the rules of my dispositions, under the influence of which I am now endeavoring sincerely and efficaciously to apply a remedy to the imaginary evils which I am persuaded exist more in appearance than in reality, as all these that are met with, as well on these frontiers as

on that of California, do not in fact proceed from the regulations of the service, but from the loose manner in which they are observed. An easy remedy for this prejudice is to be found in systematizing the regulations, clearing up those that time and experience demonstrate to require some modification, and exacting zealously a regular and perfect obedience to the same.

I feel satisfied that you will devote yourself principally to the important commission which I confide, as you should do; in which case I will recommend to his majesty this new particular service, in order that he may be pleased to dispense to you such favors as it may be his royal favor to extend you; and with this information, advising you that I will make an augmentation of the supply of clothing, trapping, and other things for the recruits and families treated of in the 22d article of the instructions, who are to make their first march to the Alanas.

The inclosed passport accompanies this, so that you may not be delayed in your own.

God preserve you many years.

EL CAVALLERO DE CROIX.

ARISPE, 27th of December, 1779.

TO DON RIVERA Y MONCADA.

MOST EXCELLENT SIR.

My dear Sir: The province of California is one of those that his majesty most particularly charges me with in the royal instructions; and the governor, Don Felipe Neve, in consequence of the orders of his Excellency Senor Varrez (the predecessor of your excellency), and of my own, has proposed several suggestions relative to the better defence and preservation and encouragement of that important country.

Having examined with minuteness the repeated information of the governor, and as they deserve at my hands the same favorable opinion as they received from the late Senor Varrez, I have ordered the occupation of the channel of Santa Barbara by a presidio of that name, and with three missions, the establishment of a pueblo, under the name of the "Queen of Los Angeles," on the Poreumcula river, and his majesty has been pleased to give his approval of the one which was founded on the banks of the contiguous river of Guadalupe San Jose.

These dispositions require an augmentation of troops, as indicated in the accompanying paper No. 1, to be distributed in accordance with the document No. 2; and in order that they may be effective, it is necessary to increase the recruits both of families for the pueblos and for the troops, the stock of country horses, and numerous other things, which I will explain to you in a distinct communication.

In order to facilitate the objects above referred to, instructions have been framed, of which I inclose you a copy, in which I enjoin

the observance of discipline upon Captain Don Fernando de Rivera y Moncada, and this officer has already entered upon his duties, but it being necessary for the proper discharge of the same by the said officer, that you should continue your kind offices to aid the execution of the same, I inclose the accompanying note, marked No. 3, which points out the dispositions necessary on the part of your excellency, and as I, for my own part, have made such as are necessary for the country, and making a list of the cattle which the commissioned officer, Rivera, is to present, as soon as he finishes the recruiting of the troops and families for the pueblos, and the collection of cavalry horses, which dispositions in relation to these matters are to be observed until he receives further orders, together with the documents for the charges and allowances which are to be provided for the presidios of California, and for the families as well as for the complete equipment of the new recruits, which will be supplied from the royal treasury of Guadalajara and Alanos.

Our Lord preserve you many years.

ARISPE, 9th of February, 1780.

Most excellent sir, I kiss your hands, and remain your most obedient humble servant.

EL CAVALLERO DE CROIX.

To his Excellency,
DON MARTIN DE MAJORGA:

The principal repeated and well founded recommendations made by you for the defence, preservation, and protection of the province under your charge, have consisted in the erection of two pueblos upon the banks of the rivers Guadalupe and Poreumcula, and of a presidio and three missions in the channel of Santa Barbara.

In order to promote and prove the importance of the urgent and most useful establishments, you have displayed all the assiduity belonging to your well-known zeal, ability, and talent; and although I, for my own part, have omitted no exertions that I could by any possibility make, they have fallen far short of their proper offices, by reason of the many troublesome and prior claims on my attention, of the vast command of these provinces, and the serious breaking of my health.

This being re-established, I send you the inclosed copy, No 1, of instructions, which I have given to Captain Don Fernando de Rivera y Moncada, in which you will find my first disposition for the recruiting of both the collection of cavalry horses, with their equipments and camp equipages; and you will also see by the documents in the envelope, No. 2, the aid that I have asked for from his excellency, Senor Verrez, for the successful result of the said first mentioned disposition.

The second are confined to the transport for all, but as they de-

pend upon the variety of new circumstances which may arise, and the more or less prompt execution of the commissions which Captain Don Fernando de Rivera is charged with, it is not possible to give them to you now in detail, nor to give you other advices than that several families and recruits of troops will be transported to your province via the port of San Blas, others by that of Guamas to Loretto, and the remainder, with the greater part of the horses, mules, and other things, by the road of the Colorado river, which was discovered by Lieutenant-Colonel Don Juan Baptiste de Anisa.

I am inclined to think that this expedition by the land route will be able to set out in September or October of the coming year; I do not insure it, but, however it may be, keeping in view these orders, and those which may be contained in the document of the envelope No. 3, which I have remitted to D. Verrez, it will be your duty to make your own arrangements beforehand; to communicate the necessary advices to Rev. Padre President Friar Irimpena Licia, and to point to me whatever you think necessary for the success of these establishments, and of my arrangements to facilitate and aid them.

God preserve you many years.

ARISPE, 10th February, 1780.

EL CAVALLERO DE CROIX.

TO SENOR DON FELIPE NEVE.

In view of what was recorded in the expediente designating the boundaries between the pueblo of San Jose and the mission of Santa Clara of this province, I have resolved by this decree of this date, in accordance with the petition of the attorney-general of the royal treasury and the opinion of its counsellor, that for the future the river Guadalupe shall serve as the boundary or dividing line, leaving to the said pueblo part of the mountain that lies along the coast, and which is on the other side of the dividing river, in order that they may have a provision of timber and wood as was proposed by Don Diego de Borica, who was governor of the aforesaid peninsula, under date of 3d of December, 1798 and 17th of January next preceding, which he communicated to you for your information and execution of the same, advising you that as it was proper (in order to avoid for the future any new difficulties, and the injuries which the citizens might mutually inflict upon each other for the want of well-defined landmarks, that the boundaries should be made secure and permanent), a relinquishment shall be made with concurrence of the padre president of the mission of that part of the mountain or coast, which is to be assigned to the pueblo for the cutting of wood and timber, by placing fixed monuments in order to avoid the aforesaid difficulties.

MARGARITA.

To the provisional governor of California.

LORETO, October 30, 1800.

I certify the above a true copy.

ARRILLAGO.

SANTA CLARA, 24 July, 1801.

I certify that the above is a copy of what it purports to be.

JOSEF ARGUELLO.

I, Don Josef Arguello, captain and commander of the presidio of San Francisco,

In compliance with the sovereign order of his excellency, the viceroy of New Spain, of which the preceding is a copy, and in virtue of having been commissioned by the provisional governor, Don Josef Joaquin de Arrillaga, to proceed (with the concurrence of the minister, the Rev. Padre President Friar Fermin de Lazan), to the division of the boundaries between the pueblo of San Jose and the mission of Santa Clara, I went in company with the Friar Martin de Laudades (who for this purpose was appointed by the said reverend padre president), and having reconnoitred the land in the presence of the right reverend padres ministers of the aforesaid mission, the judges and the commissioners, &c., agents of the said pueblo, the river Guadalupe was designated as the limits or division line of the two parties, and as the river takes its rise near both, and much nearer the pueblo than the mission, it was concluded to run a line in conformity with the direction of the course of said river (which) with slight variation from southeast to northwest, and the parties interested were notified to have constructed three monuments of stone immediately, stable and permanent, placing the last in the apex of a little hill, which lies at the foot of the Sierra mountains, which is called the "Parage de las Capitancillos," leaving to them, the inhabitants of the pueblo, a part of the oak grove in this place for want of wood, and also all the willow grove with which the source of the river Guadalupe is covered.

When this point was determined, a part of the mountain on the coast side, on the mission side of the river, was marked off for them for the supply of timber and wood for both establishments, causing them to establish a monument between the two places, and this last line to serve as a dividing landmark; and in authentication of the above proceeding, I subscribe the same with the aforesaid individuals, in Santa Clara, the 24th of July, 1801.

JOSEF ARGUELLO.

Friar MARTIN DE LANDERLO.

Minister Friar JOSE NEADIN.

Minister Friar JOSE MIGUEL ASUNA.

Minister Friar MARCAS CHABOYA.

Commissioned Sergeant MARIANO DE CASTRO.

In compliance with your desire that I should explain to you what means can be adopted to avoid the dangers that surrounded this pueblo during the rising of the rivers, I have to submit for your supreme consideration, that the only remedy is to remove and build houses on the other side of the river, where a convenient site offers at about twice gunshot distance, in front of which is situated at this time the oak grove, which is on the same table land of the mission.

This site is the property of the pueblo, within its territory, and without any controversy in regard to its boundaries.

Said site possesses great advantages and security against overflow, and the principal one is the facility of passing to the mission, even where the waters are very high, and there would be no deprivation of mass, of which the people at this time are deprived, and the travelling will not be disagreeable, but in weather like the present, there is no alternative, even in case of sudden accident or death, unless one should shoulder the sick person, and this, with a thousand difficulties they would meet with, is not an easy task, nor one to which the reverend fathers the ministers should be exposed.

These are, sir, the well-founded reasons which all the citizens, with the exception of four individuals, have made known to me; indeed, Ignacio Vallejo is of the same opinion, and for these serious reasons:

First, he says at the time I obtained the command and commission of this pueblo, we found such a great rise that it came near sweeping away the houses, leaving some of them cracked to pieces, and depriving us of mass and confession; by reason of which there were many days when we could not pass to the mission without going around about three leagues to avoid the bad places that were so common in that season, and in these places they were left afoot without being able to use their horses, nor could they look after them, nor lay hands upon them for the purpose of giving us notice of any event, whether in this pueblo or in the adjoining mission; it being such occasions which the heathen or Christian Indians select for their criminal attempts.

Finally, for sowing wheat, corn, and other grain, for pasture for large and small cattle, the passage of the mails and mule teams, it offers greater advantages, as well for timber and wood. Everything is near and more convenient, &c.

I fully approve of these views.

IGNACIO VALLEJO.

All that is reported above is what has been presented to me by the citizens, and I submit it for your gracious consideration, in order that you may make such a decision as you may deem proper.

The commissioned sergeant of San Jose, Luis Peralta, in his official communication of the 22d of August last, informed me what you will yourself see by the accompanying copy marked No. 1, in relation to the reverend fathers of the mission of Santa Clara keep-

ing their small cattle, horses, oxen, and milch cows in the range of the Calaveras.

I, being unacquainted with the location of said place, replied to the commissioned officer, which is marked copy No. 2, and in the execution of the same he went to reconnoitre the place, accompanied by the alcalde and others, and informed me that the said "Sitio de los Calaveras" belongs to the pueblo, as you will inform yourself by referring to your original official communication, which likewise accompanies this, marked No. 3.

All of which I present to your superior consideration, in order that you will be pleased to direct me whatever appears to you should be done, and to answer the commissioned sergeant.

God preserve you many years.

JOSE M. ESTUDILLO.

MONTEREY, 20th September, 1809.

To Senor Governor and Inspector,
DON JOSE JOAQUIN DE ARRILLAGA.

Copy No. 1.

The citizens and inhabitants have complained to me that the mission of Santa Clara have placed their small cattle, horses, oxen, and milch cattle in the Calaveras range, and which they say belongs to the pueblo, and as I am ignorant of the lines which divide the lands of San Jose and the pueblo, nor do I find any documents in the archives which will clear up this matter, I have made inquiries of most of the people of the pueblo, and none of them can give me any accurate information.

My opinion is that it does not belong to the mission of , but this (mission) thinks that it perhaps belongs to the mission of San Jose, and under this belief have placed their cattle there, as some time since they placed their small cattle on the Rancho de Sarios on account of the ex-pasture of the pueblo being destroyed, and their being some danger of their dying; and fearing this very thing, the citizens have stated to me that they wished, when their wheat harvest was over, to send their oxen and tame horses to this range (the Calaveras), and that if this place belongs to the pueblo the mission may immediately cease to occupy it, if you should think proper so to direct.

They represent, moreover, that in this same place much of the cattle of the pueblo are grazed, and that it is a common thing for them to be driven off, which is a great inconvenience, as they may penetrate into the recesses of the mountains.

Some of the citizens had their horses on the other side of the banks of the river, on the mission side, but they removed them on account of the reverend fathers having complained of the same, and they brought them over to the pueblo side, and they thought of put-

ting them in the said Calaveras range, but I ordered them not to do so for the present, until you decide in relation to it.

All of which I submit to you in order that you may come to such determination as you may think proper, and that I may be instructed what is the boundary line that divides the lands of San Jose and the pueblo, informing you at the same time that if the said territory of the Calaveras belongs to the pueblo, it will be a great convenience to the citizens to drive their cattle thither, because it may happen that many of them will die, as they have eaten up the pastures where they now are, and especially in the portion where the oxen feed, for the reason that the mission of Santa Clara has pastured their small cattle in the same place.

This is a copy taken from the official communication which the commissioned sergeant of San Jose, Luis Peralta, sent me on the 22d day of August last, and which I certify to.

JOSE M. ESTUDILLO.

MONTEREY, 20th September, 1809.

Copy No. 2.

In the year 1806, the present governor of this district being in the company of the Sergeant Marcario de Castro (since dead), and the alcalde of this pueblo (who he was I do not recollect), in order to settle the disputes between the citizens and the mission of San Jose in regard to the ownership of the lands, said governor was pleased to designate as the boundary between the mission and the pueblo, a hill which lies to the south of the rancho that was Jose Larios; and I recollect that the fathers promised to make a ditch from this point of said hill, to the first small creek (esterito.)

As you did not inform me whether this territory of the Calaveras is connected with this, or attached to what was the "Rancho de Larios," I cannot decide to whom belongs the range in which the padres of Santa Clara keep their cattle, which you will do at the first opportunity.

This is a copy of the original document, which in my communication of the 15th of the present month of September, I sent to the commissioned sergeant of the pueblo of San Jose, Luis Peralta, which I certify to.

JOSE M. ESTUDILLO.

MONTEREY, 20th September, 1809.

Communication from Viceroy to Governor of California.

A representation has been made to me by the guardian of the college of San Fernando, in relation to the prejudice suffered by the mission of Santa Clara, by reason of the pueblo of San Jose having been established so near said mission, notwithstanding the protests had been made against the same, praying me in consideration of the

same, to interpose the proper measures to remedy the wrongs complained of.

The complaint appears to me to be well founded in all respects. I therefore transmit a copy of the same to you, requiring you at your earliest possible convenience to proceed to the examination of the situation, boundaries, inconveniences, and injuries referred to, making the examination in person if it should be necessary, transmitting me copies of the complaints and protests which may be on file in the archives of your government, and giving me all the information that may appear in relation to the matter. God preserve you many years.

ARCENZO.

MEXICO, August 7th, 1798.

To the Governor of Californias.

Copy of Representation of Guard'n of S'n Fernando.

MOST EXCELLENT SENOR:

The mission of Santa Clara in New California was founded in the beginning of the year 1777, on the plain of the river Guadalupe, at the distance of one league from its source, on the west side of the same, in accordance with the instructions of Lieutenant-Colonel Don Juan de Auza, and the orders of the governor of the province of the Californias, the same being situated at the head or termination of the arm of the sea which runs southeast from the port of San Francisco, from which place it is distant fourteen leagues. In the year in which said mission was established, Don Felipe de Neve, then governor of the province, determined to establish a pueblo of "gente de razon," named San Jose, in the vicinity of said river; but knowing that it would be likely to be prejudicial to said mission, and in order to avoid as much as possible this detriment to the mission, he gave orders to Lieutenant Don Jose Muraga, commandant of the presidio of San Francisco, that he should establish said pueblo at the greatest possible distance from the mission; and the said Senor Governor wrote to the reverend minister and to the settlers, requesting them to permit said settlement for the defence of themselves and their mission, and that the same would be but little detriment to the mission.

The Senor Lieutenant, without doubt thinking to please the governor, placed the pueblo on the opposite shore, at the distance of three-quarters of a league from the house of the mission, saying that he had superior orders for doing the same.

A few months thereafter, the governor himself went up to visit the presidio missions and pueblo, and when he saw the pueblo, he said that the lieutenant had mistaken him; that the orders which he had given were only that some ditches should be made to conduct the waters, and not to build houses or cultivate the lands; and he promised the said fathers that the pueblo should be removed to a greater dis-

tance; and that he would give the necessary orders to prevent any detriment whatever to the spiritual and temporal interests of the mission.

During the whole of the time that the said Senor Neve remained in exercise of the government, no attempt was made to give to the settlers possession of the lands to make out boundaries, nor fix landmarks, neither did said settlers have any flocks on the side of the river next to the mission.

In the year 1782, Don Pedro Fages having taken possession of the government, he presented himself at the mission of Santa Clara, saying that he was going to fix the boundaries of the mission and pueblo, in order in the name of the king to give to the settlers possession of lands.

He summoned the fathers of the mission in order that they might assist in the measurement, inasmuch as they had charge of the temporal concerns of the Indians.

The fathers made a verbal protest (they having been summoned verbally) against the proceedings of the governor, as unjust and in violation of the laws and royal ordinances, but the governor, regardless of the rights of the Indians, proceeded to execute the measurements and to place landmarks.

During the progress of these proceedings, the fathers in the name of the Indians made a written protest to the governor; but his worship not deigning to receive the same, it was forwarded to the reverend fathers Fray, Sainfiero Serra, president of the missions, praying him to make such use of it as he might think best. The reverend father president went to see the governor, and entreated him to enter some order, although it might be of the blackest character, on the protest made by the fathers of Santa Clara, since they with justice prayed to be heard.

The reply of the governor was as brief and as concise as this: "I will take care of this; if the fathers wish to appeal to higher powers, let them do it." Good consolation for a few poor missionaries, in that retired and remote part of the world.

From this time the mission commenced to suffer from the depredation of the settlers and their flocks to such an extent, that giving annoyance to the fathers was considered the best means of pleasing the governor, who, far from listening to the repeated complaints of the fathers, in relation to the scandalous treatment of the gentile Indians, and the bad example set to the Neofites, who knew and saw the licentious conduct of said settlers towards the women, besides the damage to their fields and property, never (the governor) took any steps to correct said disorders or prevent said damages.

In the year 1786, when the Rev. Father Fr. Franco. Polon retired from the missions of California, he came, empowered by the ministers of the mission of Santa Clara, to ask justice from the supreme government, bringing with him a copy of the protest and represen-

tation of the Revd. Father President, in relation to what had passed between him and the governor; said Father Palon presented himself before the viceroy, El Conde de Galvez, and his excellency, as well as the Senor Fiscal, promised him that all the evils complained of should be speedily removed. The said Senor Fiscal said to Father Palon that a most a stringent order should be given to the governor, to the effect that he should keep a strict watch over the conduct of the settlers, and severely punish their excesses and scandalous conduct; and that in relation to the prejudices and damages to the temporalities of the mission, he would order the landmarks placed by Governor Fagas to be removed, and that the river which runs between the mission and the pueblo should be the boundary, and that by this means would be avoided not only the prejudice to the agriculture of the mission, but also that which would necessarily result from the mixing of the herds of the pueblo with those of the mission. But the serious illness and subsequent death about this time of his excellency Senor Conde de Galvez, and a short time afterwards that of Father Palon, who had taken charge of the business, prevented these resolutions from being carried into effect, which orders doubtless appear in the archives of the government, as an expediente was instituted in relation to the matter.

At the time that the late Don Jose Antonio Romero was governor of the province, and subsequently, when Don Jose Joaquin de Arvillago was governor interim, the mission did not recognize such boundaries, nor did the settlers of the pueblo attempt to prevent the mission from making settlements on lands which, according to the landmarks placed by Don Pedro Fages, pertained to said pueblo, which is sufficient proof that said settlers feared that said governors would not admit their pretension to said land, it being so evidently unjust, and in opposition to the rights of the Indians.

During the present government, as it is known with what facility lands have been obtained by gente de razon for ranchos and sowing grounds, with notable prejudice to the missions, the residents of the pueblo of San Jose claim the right of occupying lands, not only on the side of the river on which the pueblo is situated, but also those on the part belonging to the mission, and even such lands as have for many years been cultivated by the Indians, said residents alleging the right that had been given to them by Governor Fages, when, in the year '82, he gave them possession, and placed the landmarks, disregarding the protests that was made on the part of the Indians, with just grounds, and the laws that prohibit and annul such adjudications and possessions, usurping and despoiling the poor Indians of that which God and our sovereigns has given them.

In consideration of all that has been set forth, which is purely the truth, which will be verified if your excellency so order it, I appeal to the notorious pity and justice of your excellency, praying that you may be pleased to order the governor of California not to permit the

said residents of the pueblo of San Jose to molest the ministers, missionaries of Santa Clara; and in order that this evil may be permanently remedied, it would be well, if it is possible in accordance with justice, to designate as the dividing line between the said mission and pueblo, the said river Guadalupe, in accordance with the opinion of the fiscal of royal hacienda, Don Vicente Pesados, since by this means will be avoided the continued difficulties in relation to the sowing grounds and the mingling of the flocks, together with many other inconveniences and difficulties; and besides, the land being divided in this way, there will remain to the pueblo of San Jose more than enough for all in the spacious plains which lie in three directions, and the mission will be satisfied with that which remains on its side (of the river), although it is less and of inferior quality.

God our Lord preserve the life of your excellency many years.

Kissing the hand of your excellency, I remain your most humble servant:

FR. FOMAS DE LA PENA.

To his Excellency the Senor Viceroy,
DON MIGUEL DE AZUAGA.

It is a true copy.

ALEGRIA.

MEXICO, August 8th, 1799.

No. 603.

September 4th (1798).

MOST EXCELLENT SENOR:

I transmit to your excellency the expediente in relation to the limits between the pueblo of San Jose and the mission of Santa Clara, to the end that, in view of the same, you may be pleased to make such orders as you may deem just, with the understanding that, in the representations made by the missionaries of Santa Clara, they have greatly exaggerated the number of unchristianized Indians which they have been able to collect; and besides, there not being so many Indians in the neighborhood of Santa Clara, the missions of San Jose and San Juan are near by, at which places many of these Indians are in the habit of attending.

The above is a record of a communication from Governor Banco to the viceroy.

No. 643.

December 3d, 1798.

MOST EXCELLENT SENOR:

In obedience to the superior order of your excellency of the 7th of August last, which I received on the 28th of November last. I will explain all that I understand in relation to the prejudices set forth by the reverend father guardian of the college of San Fernando, as

suffered by the neophites of the mission of Santa Clara, by reason of their having been founded in the year '83, in the vicinity of said mission, the pueblo of Spaniards, named San Jose.

In relation to what took place upon its establishment between the reverend fathers ministers the Reverend Father Fr. Jumpero Serra, and my predecessors Don Felipe de Neve and Don Pedro Fages, I can explain nothing, and I have the same remark to make in relation to the promise made by his excellency the Senor Conde de Cralvez and the Senor Fiscal of royal hacienda to the Reverend Father Francisco Palon, when he presented this matter in the capital.

Up to the time that I took charge of the government, it seems that not much attention was paid to boundaries; this is not strange, because the inhabitants of the pueblo being only a few poor devils, it little mattered to them what the mission claimed so long as they had an undisturbed possession of their suertes of land.

But when it became necessary to distribute other lands to various "*invalidos*," and soldiers, suertes "*licenciados*," as ordered by his majesty in the regulations for the government of the peninsula, and also for the purpose of making an experiment in the cultivation of hemp, it then became necessary that I should take the matter in hand, in order that the pueblo might have all that belonged to it, in accordance with the boundaries and landmarks designated at the time of the establishment of the same, not finding any contradictory order; on the contrary, there exists one made by the commandant general, in which it appears that the boundaries designated at the establishment were confirmed.

The proceedings in relation to this matter are contained in the "*carpeta*," which I forward to your excellency, containing ten documents, numbered from 1 to 10.

In order to proceed with certainty in the matter, I solicited of your excellency, in a communication dated on the 4th of September last, numbered 603, that you would be pleased, in view of the expediente forwarded to you, to declare said boundaries, the facts in said expediente being set forth as clearly as possible.

As I have before me a sketch of the land lying between the mission and the pueblo, and have examined it personally, I do not think it necessary at this time that I should go upon the ground, but will do so after you are pleased to advise me of your resolution in relation to the matter, for the purpose of putting the same in execution, and at once removing all causes of *all causes of* dissension that have existed up to this time.

I agree with the reverend father guardian, that the river being designated as the boundary, there will remain to the pueblo a large amount of good arable land for its use as the population increases, but leaving to it a part of the sierra which lies towards the coast, for the purpose of supplying the same with timber and firewood.

If it should be thus determined, there will be given suertes of land on this side of the river (the pueblo side), to three or four residents, who have lands on the other side (the mission side), as they have considered themselves entitled to them in accordance with the ancient landmarks.

Having examined the archives, I have found no document or representation of the missionaries in relation to the matter; and in order that your excellency may be informed in relation to the instructions which governed the commissioner, I forward the original to you, numbered 2.

All the reverend fathers are aware with what firmness I have restrained every kind of disorder which has reached my notice, and the punishments which have been inflicted upon those committing the same.

If there are some, they are attributable to the frailty of humanity, and as I cannot be at all places, it is impossible to avoid them.

In view of all that has been set forth, your excellency will be pleased to determine that which is best.

Communication from Governor Bouca to Vice Roy.

MONTEREY, January 17th, 1799.

MOST EXCELLENT SENOR:

On examining again the archives, to see if I could find any document in relation to the boundaries of the mission of Santa Clara and the pueblo of San Jose, in the private instructions given by the late Governor Don Felipe de Neve to his successor, Don Pedro Fages, I find that the first (Neve) has declared in article 11, the true limits to be observed in the said establishment. I forward a certified copy of the same to you, that you may, if you think proper, make use of it, without, however, changing my opinion that the river should be declared the dividing line, leaving to the pueblo part of the sierra towards the west or coast, for the purpose of supplying the same with timber, for thus will be removed all cause of disturbance.

(Extract from private instructions given by Governor Neve to his successor, Governor Fages, referred to in foregoing document.)

"And for the purpose of avoiding all difficulties that may arise in relation to boundaries between the mission of Santa Clara and the pueblo of San Jose, I declare, as heretofore I have done, that the *guardaragua*, or line dividing the lands of the two establishments from east to west, is a line midway between the two settlements; the part on the north belonging to the mission, and the part on the south pertaining to the pueblo, where landmarks may be placed."

Communication from Raymundo Carillo to Governor Arrillaga, August 1st, 1801.

In an official communication of the 31st of July last past, Captain Don Josef Arguello informed me that he had concluded the operation of fixing the limits between the pueblo of San Jose and the mission of Santa Clara, which he was commissioned to do by you, and I will take care to direct to the justices of said pueblo the necessary orders for the prevention of disturbances between the settlers of the pueblo and the Indians of the mission, so that, in case the inhabitants of the pueblo should experience any harm to their lands from said Indians, they may communicate the same to the reverend fathers, and make their complaints to me, without taking upon themselves the correction of the same.

God preserve your life many years.

RAYMUNDO CARILLO.

MONTEREY, August 1st, 1801.

To the Snr. Governor JOSE JOAQUIN DE ARRILLAGA.

Letter from Governor Arrillaga to Jose de la Guerra.

With your official communication of the 3d of July, I have received the letter of the commissioner of the pueblo, and the accompanying copies, by which I see the permission which was given by the late governor to Jose Ma. Larios and Ballistero, to establish themselves with their families in the place of "La Calera;" and that the first (A. Larios) has sold to the mission of San Jose a thing in which he had only the right of use; in consequence of which you ordered that the delivery of the same to the mission be suspended until the determination of the governor, in which you have acted very properly.

The father minister of said mission has written to me in relation to the same matter, and by the accompanying copy you will see what I have replied to him.

Larios had no power or authority to sell such a place, and without consulting the government, the owners of land that are donated or loaned have no right to sell the same, although they should acknowledge the supreme dominion. Thus it is ordered; and when the late governor order the commissioner of the pueblo to deliver the said place to Larios and Ballestero he did not recognize the same as belonging to the mission.

For which reason, and because Larios has proceeded in bad faith, you will impose upon him the punishment which may appear just, advising me of the same, since an opportunity has been given to both the mission and the pueblo to prevent their claims, adding that Larios

having sold a place which was not his in property, but only in use. God preserve your life many years.

JOSE JOAQUIN DE ARRILLAGA.

SAN XAVIER, August 16th, 1803.

DON JOSE DE LA GUERRA.

Copy of letter to Punot, referred to in foregoing.

MY DEAR SIR:

In reply to your communication, in which you advise me of the voluntary cession made by Jose Maria Larios of his rancho to the mission under your charge, he receiving pay for the house he had built, I have to say to your reverence, that at this time I can by no means approve said cession, or whatever it may be, since Larios had no right to alienate the place without the knowledge or consent of the government; and besides, the commissioners of the pueblo and the alcaldes solicit the same place; for which reason I cannot accede to your petition, since I am persuaded that said place, up to this time, has been recognized, without contradiction, as pertaining to the pueblo.

Grateful for the kind expressions with which you favor me, I repeat my desires to serve you; and, assured of this truth, you will command your obedient servant.

God preserve you many years.

JOSE JOAQUIN DE ARRILLAGA.

SAN XAVIER, August 19th, 1803.

To the reverend minister of the mission of San Jose.

A copy.

ARRILLAGA.

Prefectura del Primer Districts.

I have the honor to reply to your note of the 16th inst., in which you order that there shall not be adjudicated to one individual alone the "Canada de los Capitancillos," the same being common lands of the pueblo of San Jose, leaving it to this prefectura to act in the matter in accordance with article 77 of the law of the 20th of March, 1837.

I have the honor to reply to your said notes, reiterating the assurance of my esteem and regard.

God and liberty.

JOSE MA. VILLARA.

SAN JUAN DE CASTRO, July 20th, 1840.

To the secretary of state, DON MANL. JIMENO.

(Indorsed) Filed July 2d, 1859. W. H. Chevers, clerk.

The defendants then offered in evidence a document in the Spanish language, which being translated into the English language, is in the words and figures following:

Pueblo of San Jose de Guadalupe.

According to the (informe) official inquiry of the Alcalde Mariano Castro, he recognizes as the land of this pueblo, from the line running or (calera) as the standing point, distant two and a half leagues in a northwesterly direction (from the town), to the "Estero" (mouth of the river, extending thence up to the "Llagas," a distance of about ten leagues from the town; on the southeast lies the mission of Santa Clara, recognizing as the boundary of the same the "Puerta de Las Capitancillos" (the land lying near a little stony hill, so called), up to the foot of the "Sierra Madre," which runs along the coast of Santa Cruz, a distance of four leagues, whence two arroyos (creeks) take their rise, which flow in the wet season, and issue out into the large swamp, constituting the beginning of the creek or river Guadalupe, which at a distance of 500 varas flows by the pueblo, and serves as the dividing line from the mission of Santa Clara. The head waters of this river are about one league distant, in a southwesterly direction, and covered with woods.

At the distance of one quarter of a league is the drain, used for purposes of irrigation by the inhabitants of the pueblo, whose cultivated lands are situated upon its banks, at a distance of about one and a quarter leagues to the north.

This tract of land contains groves in the low ground, called "aguage," springs, and a dry creek is formed, which runs in the wet season, and with the other two spreads out into the estero, which forms the bay of San Francisco (punta de San Francisco). The chains of mountains on the east run from the north to south, the lowest of which belongs to the mission of San Jose, where there is a gap between the little low hills forming a canon, and at this point there is a distance between it (the mountain) and the dividing line of the mission of Santa Clara, of something like two and a half leagues, a little more or less, the width of the tract up to the creek of "Las Llagas." The latter runs dry. From the mountain where it issues out rises a creek, which also dries up, and in the very best seasons irrigates the lands, and good crops are raised.

Here come the cattle for water, which have their ranges or drinking-places along the whole skirt of the mountain, at the foot of which are several large groves of oak, and at the point called Zayata, distant about a league, there is another oak grove.

These "abrevadores" (watering-places), as well as the Puerta de Capitancillos, lie upon the edges of the dividing line, at the point of the latter, where stands now a large live oak grove, which, without any break in it, extends into the lands of Santa Clara.

In this extent of territory much of the land is dependent upon the seasons, and the principal and most reliable are those of Sausal,

which are watered by the arroyode aguage, and the edges of said groves.

Above the head of the river Guadalupe, on the edge of the grove, there are six "suertos" of land, and at the distance of four and a half (leagues) the dry lake designated, where there are ten sitios.

And to lay the foundation for introducing said document in evidence, introduced R. C. Hopkins as a witness, who testified that for five years last past he has been, and yet is, a clerk in the office of the surveyor-general of the United States for California, and as such has had and now has charge of the Spanish and Mexican archives in said office. The witness produced an unbound book in manuscript, and in the Spanish language, which on the title page thereof had the following indorsement in the Spanish language: "1828, Cuaderno del Registro de los sitios, Tierra y Senales que poseen los havitantes del territorio de la Nd. California." And he testified, that when he first took charge of said archives, about five years ago, the said book was amongst them, and in the same form in which it now is, and that so far as witness knew it had not since been altered or added to; that said book purports to be a registry of the boundaries of "sitios" or places, branding-irons and ear-marks of cattle, in California.

That the several documents recorded in it appear not to have been recorded in chronological order, but some of later date are recorded before those of an earlier date.

He also testified that the document offered in evidence is found on page 26 of said book, and at the top of the page above said document are the following words: "Pueblo de Sn. Jose de Guadalupe."

The defendants also introduced H. W. Halleck as a witness, who testified, that in 1847 he was secretary of state at Monterey, in California, and as such had charge of the Mexican and Spanish archives, until February, 1850, when he delivered them to his successor, Major Canby. That the book produced by the witness Hopkins was amongst and formed a part of said archives, when he first took charge of them, and was delivered by him with the other archives to Major Canby, in February, 1850. That said book at that time did not have the yellow paper cover which is now on it, and he supposes that was put on by Major Canby, as there is an indorsement on it in Canby's handwriting.

Thereupon, the plaintiff objected to said document as not admissible in evidence; but the court admitted the same in evidence, to which the plaintiff excepted.

The defendants then put in evidence certain documents in the Spanish language, which were admitted to form a part of the said archives in the office of the said surveyor-general, and which documents translated into English are in the words and figures following, to wit:

1837. No. 339.

Translation: "Expediente, moved by the illustrious ayuntamiento of San Jose, petitioning for the marking out of limits for the lawful endowment of said people."

The citizens Manuel Pinto, Jose Maria Flores, Leandro Rochon, Luis Chabolla, Jose Antonio Sepulveda, Dominig Mesa, Jose Hernandez, Antonio Alviso, and Jose Romero, in the name of the whole population, present themselves before you, and to your well-known equity, and in the manner prescribed by the laws, represent:

That having learned that you are about to put certain persons in possession of the tracts of land (sitios) which in our opinion are the common property of the inhabitants of this pueblo (ejidos), we appeal to your sense of justice to suspend, if possible, said acts of possession, until, in the meantime, the regulation is complied with which requires a map of the circumjacent lands belonging to the pueblos.

If you will have the kindness to submit to his excellency the governor this our reasonable request, before these said individuals are put in possession, we shall appreciate the attention extended to us.

What we lawfully claim is this, that the pueblo, when a title of land is made to any individual, shall have the privilege of first deciding that neither the mission, corporation, or town will be injured thereby; and, in this instance, the injury that in our opinion we would receive, without first pointing out and designating by landmarks the commons (ejidos) that belong to the inhabitants of this town, is very apparent.

For which reasons we humbly pray you will be pleased to accede to our petition by which a favor will be done us that we shall greatly appreciate.

(Signed) TOMAS PACHECO,
For and at the request of the aforesaid citizens,
who do not know how to write their names.

Pueblo of San Jose, December 21, 1837.

Court of First Instance of the Pueblo of San Jose, Guadalupe.

The accompanying application is handed to the court for its approval, which it desires, and, consequently, it has thought proper to send it up to the superior authority, in order that it may take into consideration that in some places, by reason of the manner in which the people manage these matters, disputes arise in relation to property and lands, for which reason this court on his own behalf recommends the marking out of land for the common use of the inhabitants of the pueblo, the result of the tax (pago a canon) which every one pays, being highly beneficial; at the same time you will be pleased

to indicate provisionally, what it is in the next place of importance to know, the boundaries of a pueblo, and we will then proceed to locate the grants, and give the possession of the same.

All of which I have the honor to pray at the hands of the higher authority, for the public benefit, and, in the discharge of my duty, to clear up the business.

God and liberty.

JUAN ALVIREZ.

To his excellency the provisional governor of the department.

PUEBLO OF SAN JOSE GUADALOUPE, Dec. 23, 1837.

In consequence of the petition of said citizens of the pueblo of San Jose, the official communication of the alcalde of the said municipality, recommending, in the name of the ayuntamiento of said town, the matters therein contained, and it being one of the functions of said court to propose to the government everything relative to the formation of regulations, and whence proceeds the entire system of administration,

I return to you the accompanying documents, in order that when they shall have been handed to the ayuntamiento this body may appoint a commission of its own members, or of other persons, for the purpose of making a plan or map of the lands that are to be laid out as the legal endowment of the town (fundo legal), first obtaining the proper information in regard to the neighboring estates, and with the most accurate description of the distances and names of the owners, and the springs, groves, &c., contained therein. When these prescribed formalities shall have been complied with, return this espediente for the decision of the government.

God and liberty.

JUAN R. ALVARADO.

To the alcalde of the pueblo of San Jose.

MONTEREY, Dec. 24, 1837.

In accordance with the preceding decree of the government, dated the 24th day of December, in the year 1837, relating to the appointment of commissioners, who are to make a plan or map for the land and boundaries of this people; therefore the ayuntamiento, duly respecting said decree, and the aforesaid claim preferred by the citizens of this pueblo, has, for these reasons, thought proper to appoint Guillermo Castro, Guillermo Gulnac, and Salvio Pacheco, citizens of said pueblo, as commissioners, who, at the same time being present in this tribunal, were informed of their appointment, and having taken the oath of office, and the question being put to them, "Do "you swear to God our Lord to discharge the duties of the trust that "has been conferred on you by the public, conscientiously giving to "each one that which lawfully belongs to him, and as far as you are

"concerned, using your best ability and knowledge until you succeed "in leaving plainly marked out said lands, on which the inhabitants "can and should subsist in peace and harmony." To this the three citizens aforesaid replied, that so they swore, promising to do all in their power to the extent of their limited knowledge and intelligence. For which reasons they are recognized as engaged in the service of the public from this day, the 20th of March, 1838.

And at the conclusion of the act they subscribed with me, the constitutional alcalde.

DOLORES PACHECO,
GUILLERMO CASTRO,
GUILLERMO GULNAC,
SALVIO PACHECO.

In the pueblo San Jose de Guadalupe, the 22d day of the month of March, 1838, the aforesaid commissioners having met in the constitutional hall of said pueblo during this day's session, the commissioner Salvio Pacheco made this proposition, which he makes known to the best of his ability to the commission.

That the initiatory step to be taken in entering upon the discharge of the trust which the public had conferred upon them, was the necessity of appointing a secretary to keep a record of such interesting proceedings. Whereupon the commission, in conformity to law, and in accordance with the above proposition, proceeded to appoint Salvio Pacheco, one of the commissioners, who promised and took a new oath for the service, and at this session entered upon the discharge of the duties of his appointment.

Having concluded this act, it is subscribed by the commissioners.

GUILLERMO CASTRO,
GUILLERMO GULNAC,
SALVIO PACHECO.

At the same session,—the commissioners having entered upon the discharge of their duties,—the commissioner, Guillermo Castro, made the following proposition: That the proper limits of this poblacion should be recognized to be the identical landmarks marked out, and which were in old times known as such by the old colonists (pobladores), and given by the proper authorities in those days a short time after the foundation of the pueblo, as appears from documents submitted to us; and moreover, as it is well known that only on the northwest by west, and to the headwaters of the river Guadalupe, northwest by west, have been indicated by monuments; but for want of knowing the landmarks in other points of the compass, it appears to be necessary to agree, for these reasons (recognized as the other points were, as has been stated), that we should then declare how many varas or sitios should properly be designated as lands recognized as the reservation (propios) and commons for the neighboring

(ejidos), so that, besides the cattle which they now own, and arable lands which they cultivate, they may be adding to the above, advance their prospects; and that the commissioners (without interfering to curtail the extent of land embraced between points marked out in olden times, and without grasping more land where requested may be done one in the neighborhood), may not fail carefully to guard against any want of accommodation and conveniences for the raising cattle, which is now very important as regards trade, and upon which equally depends the subsistence of families.

Whereupon Mr. Guillermo Gulnac, taking the floor, added, that they should leave to the decision of government the number of varas of land that, as pueblo, it is entitled; and that they should merely draw the surveys, in order to give with precision a just system of lines and boundaries, recognizing distinctly the arroyo de las Llagos as a landmark well known for this part of the land; all of which propositions remained over for discussion to the next day.

GUILLERMO CASTRO,
GUILLERMO GULNAC,
SALVIO PACHECO.

The 23d day of March, 1838, on the second reunion of the commissioners, it was thought proper in this day's act to read over the proceedings of the previous session; whereupon Guillermo Castro took the floor, and said that, in relation to the recognition of such a quantity of land as was embraced by the eye up to the point of Las Llagas, as has been proposed, there may be found in this part within this circuit, or intermediate space, some of the neighbors who, having already had the loan of the land from the ayuntamiento, have recently obtained the gift of proprietorship in the same, it would seem inconvenient, for these reasons, that those lands should be embraced in the survey, and that the parties interested might allege the right of ownership,—which was laid over for discussion; and, at the same time (acto), Senor Pacheco took the floor, and proposed that the right of proprietorship or possession should be exercised according to law, and without prejudice to the pueblo or corporation, as pointed out by the 10th article of the colonization law, and on the well-established principles, that where there is a denouncement, or a party makes a complaint, the possession from that time is null and void; and in these cases the right of reclamation remains secure, as also is the case if they were regulated at the time of making the grants, for which reasons, if there are any private lands within the commons belonging to the pueblo (ejidos), they are subject to the custom of the community (until the law is recorded), which subjects them to a tax (canon), and that even the pueblos themselves should be subject to the laws. He said this in relation to the commission, not knowing the quantity of land that should be enjoyed by the inhabitants of the pueblo, so capable of occupying 10 or more sitios (leagues), which

they formerly had in occupation; and for the further reason that, in the proposed district, there are very necessary things that should be left free for the public benefit, as building timber—of prime necessity, and stone, limekilns, &c., in order that the pueblos might not be dependent for these things.

Wherefore, after the survey of the land as has been proposed, the government will decide these matters in accordance with the rights of proprietorship, and all that is contained in the decrees, the right of the pueblo to allege whatever she considers in (if she does not approve of it) remaining intact.

All of the aforesaid propositions were, after much discussion, approved, there being but one mind on the subject, and foreseeing the inconveniences that might otherwise arise, they remained of one accord, and when this act was finished they subscribed it for its punctual observance, the commissioners protesting their sincere desire for the public good.

GUILLERMO CASTRO.
GUILLERMO GULNAC.
SALVIO PACHECO.

In the Constitutional Hall of the City of San Jose de Guadalupe, the 24th of March, 1838.

The commissioners proceeded to the appointment of the witnesses who are to be present at the survey of the land, and two others to convey the chain (cordel), and who had already been put in charge of the appointments; the first of whom are Salvador Garcia and Thomas Pacheco; and the second appointed for this work are Isidro Cynecum and Francisco Garcia, who at the same time having been brought before me, and the question being asked of the two of them, "Do you swear to God our Lord to discharge the duties assigned you by the public?" they answered yes, they swore to do so.

In the same manner the second two were questioned, and they made the same response, and went through the same forms of oath.

They then proceeded to the measurement of the vara to be used in the survey, and the witnesses stated that it conformed to the Castilian rule, and that it was thirty-six inches long, in which, in presence of both, they proceeded to measure a chain of two hundred varas, in order to proceed with the survey, which are required by the colonial law of the colonization, and which was done in the presence of the aforesaid witnesses and commissioners, and who subscribed their names to their oath, and the measurement of the chain and vara.

THOMAS PACHECO,
SALVADOR GARCIA,
ISIDOR SYVRIAN,
FRANCISCO GARCIA,
SALVIO PACHECO.

On the 25th day of March, 1838, the commissioners thought proper to pass to the east, and having stationed themselves (for a starting-point) in the woods and point known as the boundaries of this jurisdiction, under the live oak, known from ancient times as being on the dividing line, they run the first line from northwest to southeast, which passes through the Sierra, or mountains which are called "Los Buellos," "Pala," "San Felipe," "Las Animas," and "Aquages de las Llagas;" at both ends of this line, and in the middle of the said "Pala," as soon as the survey of the line was finished, they caused to be erected the corresponding landmarks of stone, in a substantial manner; and from the first point, already mentioned, they proceeded to run the other line, in accordance with what was acknowledged to be the lands belonging to the aforesaid pueblo, and so as not to injure any person; which resulted in their running said line from northeast to southwest by west, up to the embarcadero, to the last live oak that is seen on the bank of the river Guadalupe and its embarcadero; said line passing near the house of the citizen Jose Higuera, and distant from it 410 varas, the house being outside the line; which line measured two leagues eight hundred and seventy-three varas, which really is its width (longitude); equal to which is the southern line, where the Arroyo de las Llagas is the dividing line; and the line run from this point to the embarcadero, according to the declaration and survey, has for its length (latitude) eleven leagues and a half.

Having concluded these measurements of the width and length, they proceeded to take the bearing from the source of the river Guadalupe to the Puerta de Capitancellos, which the compass took the direction of. Stationing themselves at the said source of the river, the compass pointing towards the live oak, which is seen from this in the elevation of the wood or small hill covered with chimisal, which was formerly seen in most of the groves and oak woods, the bearing being northwest by west, and from the Arroyo de las Uras, they drew the last line to this "Puerta de Capitancillos;" which said line, as I have said, is run by the compass from west-northwest to east-southeast.

In these bearings and lines, which were run in old times, there appears to have been a mistake in placing the monuments, as they are now found to be much within the boundaries of the lands belonging to the inhabitants of the pueblo, and within the line on the northwest by west, which divides the lands of this pueblo from the neighboring mission of Santa Clara, and it appears proper to demand that the monuments be moved to where they legitimately belong, and to correspond with the aforesaid bearings.

All of which was subscribed in my presence by the aforesaid witnesses and commissioners, which I certify to.

SALVIO GARCIA,
ISIDRO SYVRIAN,
THOMAS PACHECO,
FRANCISCO GARCIA,
SALVIO PACHECO.

The commissioners having executed the decree in relation to the land, and concluded the survey which they have made for this pueblo, therefore deem it proper to remit them to the proper ayuntamiento, with the corresponding map which accompanies it, in order that they may take such action as may be proper, contained in four leaves of paper written on.

Excuse the want of stamped paper, as there is none.

SALVIO PACHECO.

(For map, see original, page 328.)

The defendants then introduced Guillermo Castro as a witness, who testified as follows, to wit: That he is now fifty years old; that when he was ten years of age, he went with his parents to reside in the pueblo of San Jose, and resided there ever since, except at short intervals. Being shown the expediente of 1837-8, just in evidence, says he knows the handwriting of all the parties whose signatures appear in the said expediente, except those of Salvador Garcia, Juan Alvirez, and Ysidro Sibrian, and all the said signatures are genuine.

That witness is the same Guillermo Castro whose signature appears several times in the said expediente. That witness saw the said expediente and the map attached to it about the time it bears date, and it was made at that time, and after it was finished it was delivered by the commissioners therein named to the ayuntamiento of San Jose, to be forwarded to the governor; that witness was one of the commissioners named therein; that in ascertaining the boundaries of the said pueblo lands, the commissioners inquired of the old inhabitants of the pueblo, and they informed the commissioners what were the ancient boundaries, to wit: the Las Llagas, the rancho of Higuera, the Guadalupe river, and the summit of the Sierra on the east. The commissioners were informed by these old people, that long before then, there had been some contestation between the mission of Santa Clara and the pueblo about the dividing line; that in the old time, it was supposed the line ran from the mission of San Jose to the gap of the Santa Cruz mountains, but as the lands were settled and occupied the boundaries were contracted; that nothing was known about title but only the boundaries; that in making the survey they found at the head waters of the Guadalupe a monument of stones, and at the hill of the Capitancillos another monument of a similar kind. Saw monuments only at the two places named. That they ran the line from the church at the pueblo to the Llagas, and then from the church to the embarcadero at the mouth of the Guadalupe, and then from a point east of Higuera's house on the side of the mountains to the embarcadero. Thinks they did not run the eastern line, but took for that line the summit of the mountains from the point back of Higuera's house to the Llagas.

The custom from the time witness first went to the pueblo, was,

for the mission of Santa Clara to hold "rodeos" outside of the limits above described and on the mission side of the Guadalupe, and for the inhabitants of the pueblo to hold "rodeos" within the limits aforesaid. These were considered the "rodeo" limits of the pueblo. That in the old times, the creek between the mission of San Jose and Higuera's house, was the boundary on the north before the pueblo lands were needed for settlement; but as the lands were disposed of, the pueblo limits became narrower.

There was an officer in the pueblo called "judge of the plains," who gave notice of and superintended the "rodeos."

In early times it was customary to hold "rodeos" every eight days in the pueblo. The limits of the pueblo "rodeos" were formerly those above described; afterwards the rodeos of the pueblos had to remove their boundaries, because the governor made grants of its lands, and the pueblo had to come within those grants.

The cattle of the inhabitants grazed in common over the lands within said limits, but some of them kept their tame cattle separated from those of the other inhabitants, and might hold rodeos by giving notice to the "judge of the plains," and some of them petitioned the pueblo for leave to occupy small places separately within the said limits.

In holding rodeos, the judge of the plains would take out parties of from 10 to 100 men and collect the cattle together, and when collected, each person could select out his own and mark them, or if he pleased, slaughtered them for use, all being under the supervision of the judge of the plains.

On his cross-examination, he testified that the commissioners found only two boundaries, one on the hill, the other at the source of the Arroyo Guadalupe, and they fixed the boundaries as shown in the expediente, and made the map annexed to it, because it was thought best to do so and to forward it to the government, so that it might decide whether or not the pueblo was to have the lands embraced in the boundaries. There were persons at that time living on ranches embraced in the boundaries, but witness does not recollect that any of them made a protest against or any opposition to the acts of the commissioners.

Juan B. Alvarado was governor when these proceedings took place.

The defendants then read in evidence for the purpose of establishing the ancient boundaries of the said pueblo lands, and as evidence of such ancient boundaries, a deposition made by Mariano Castro, having first proven that said Castro is dead and was for many years an inhabitant of said pueblo, which deposition is in words and figures following:

SAN FRANCISCO, January 12, 1853.

On this day, before commissioner Harry I. Thornton, came Mariano Castro, a witness in behalf of the claimants, Charles White, and Isaac Branham, petition No. 287, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

Questions by Claimants.

Question 1. What is your name, age, and place of residence? and how long have you lived there?

Answer 1. My name is Mariano Castro; my age is 69 years; my residence at Santa Clara; and I was born in California, at the presidio of San Francisco.

Question 2. When did you first become acquainted with the pueblo of San Jose?

Answer 2. Since my boyhood I have known it.

Question 3. Had the pueblo of San Jose any lands or not? and if it had, where were these lands situated?

Answer 3. The pueblo had lands, and have had them ever since the settlement or foundation of the town?

Question 4. Do you or not know whether the boundaries of the pueblo were ever run off or marked?

Answer 4. I do not know.

Question 5. Were there any marks or monuments showing the bounds of the pueblo lands of San Jose when you first knew them?

Answer 5. There were; the is one of the monuments, the road to Santa Cruz is another, and the Las Llagas is another. The barranco that I speak of is near the agua caliente. It may be a thousand or five hundred varas distant from the same.

Question 6. How long have you known this barranco as one of the limits of the pueblo?

Answer 6. I have known it as such from my boyhood.

Question 7. How long have you known Las Llagas as one of the boundaries of said pueblo?

Answer 7. I have known it as such from my boyhood.

Question 8. Does the Santa Cruz road cross the hills or mountains?

Answer 8. It does cross the hills at the Portezuelo, which is one of the bounds.

Cross-examined by Law Agent.

Question 1. What do you mean when you say the pueblo had the lands in those limits?

Answer 1. I mean that the government of Spain gave the lands to the pueblo, and they laid it off and put their landmarks.

Question 2. Did the pueblo rent, or sell, or give those lands to any individuals?

Answer 2. The pueblo has not sold any lands, because they could not sell it; they have not rented it, because they have granted it by order of the government to the inhabitants for settlement and cultivation.

his
MARIANO ✕ CASTRO.
mark

Sworn to and subscribed before me, this 12th day of January, 1853.

HARRY J. THORNTON,
Commissioner, &c.

The defendants then introduced James W. Weeks as a witness, who testified as follows: That he has resided in California ever since the year 1831. That he went to the pueblo of San Jose to reside in the year 1832; and has resided there ever since, except about four years, from 1841 to 1845, during which he resided at Santa Cruz. That he was well acquainted with William Gulnac, one of the commissioners named in the expediente of 1837–8. That witness was a partner in business of Gulnac; that Gulnac is now dead, having died seven or eight years ago; thinks Gulnac first came to California in 1835, and lived for a time at the mission of San Jose. That witness also knew Dolores Pacheco, Mariano Castro, Juan Soto, Louis Peralto, and most of the old inhabitants of the pueblo of San Jose; that witness lived with Gulnac whilst he was acting as commissioner, as set forth in the said expediente of 1837–8.

That witness was interested in knowing what were the boundaries of the said pueblo lands, and often talked with the old inhabitants on the subject; and was informed by them that the Guadalupe river, from its mouth to its head, and thence to the Capitancillos ridge, and thence along the ridge to the Llagas, was the western boundary; and thence along the Llagas, to the mountain on the opposite side of the valley, was the southern boundary; thence along the summits of the mountains, to a tree on the side of the mountain towards the mission of San Jose, was the eastern boundary; and thence to the embarcadero at the mouth of the Guadalupe, was the northern boundary; that these were the boundaries fixed by Gulnac, Castro, and the other commissioners. That in the pueblo was an officer called judge of the plains, who was sometimes appointed by the governor and sometimes elected by the people. That this officer governed the "rodeos," which were held every eight days, of which notice was given to the people; that the object of the "rodeos" was to take care of the cattle, to brand and mark them; that on such occasions the people would turn out, drive up the cattle, examine them, and do whatever was necessary to be done with them; that these were the

lines between the pueblo and the mission of Santa Clara on the west, San Juan on the south, and San Jose on the north; that the Llagas was the dividing line between the pueblo and the mission of San Juan, and the Guadalupe was in part the boundary between the pueblo and the mission of Santa Clara; that the pueblo "rodeos" were confined within these limits; and that the cattle of the inhabitants were pastured in common on the lands within the said limits.

Most of the inhabitants had cattle which ranged in common over the lands. If the stock of the pueblo or mission strayed across the line, it was driven back within the proper limits.

On his cross-examination he testified that Gulnac had described the boundaries to him above specified. Does not know how many leagues of land are embraced within the said boundaries. That the Llagas, which is the dividing line between the pueblo and the mission of San Juan, is about halfway between the said pueblo and the mission buildings, the whole distance between the two places being about forty miles. That from the pueblo to the embarcadero, at the mouth of the Guadalupe, is about nine miles.

Thinks the said boundaries do not embrace the New Almaden mines; but is not certain. The inhabitants of the pueblo owned their cattle separately; and each had his own brand and branding iron. That witness was nineteen years old when he first went to the pueblo, and after going there did whatever he could find to do to earn a living; was a blacksmith, millwright, woodsawyer, &c.

Has no interest in the land in controversy, nor in any land.

On re-examination he testified that he saw a pile of stones at the embarcadero, which, he was told, was one of the monuments; also saw a tree on the Llagas which was marked; it stands near the road on the west side of the valley, and about fifty yards from the Llagas.

The defendants then introduced Thomas Campbell as a witness, who testified that he resides in the town of San Jose, and has lived there since the early part of the year 1847. That he was acquainted with William Gulnac in his lifetime. That Gulnac pointed out to him some of the boundaries of the pueblo lands; that one of the corners so pointed out was a white place on the side of the mountain, on the east side of the valley, and east of the embarcadero; that Gulnac said there was a pile of stones near this spot, which marked one of the corners of the said boundaries.

That he said the line ran from this point to the embarcadero, at the mouth of the "Guadalupe;" thence southwardly, leaving the mission of Santa Clara to the right, and running through a timbered place called "Sausal," nearly west of the town of San Jose, at the head of the Guadalupe. Witness further testified that in this timber was a pile of stones, which he has seen, and which he has often heard was on the boundary line.

That this line continued to the creek called Llagas, about 23 miles south of the town of San Jose, and thence across the east side of the

valley, and thence northward to the point of beginning; that these were the boundaries described by Gulnac, and he has heard many persons in the pueblo speak of these as the original boundaries. He further testified that he knows the land in controversy in this suit, and that it is within the limits of the pueblo lands above described.

The defendants then introduced Juan Galindo as a witness, who testified as follows, to wit, that he was born at the mission of San Francisco, in California, and is now eighty years old; that he resides at the mission of Santa Clara, and when he was a boy resided at the pueblo of San Jose; that in the year 1801 he joined the army, and continued in the army for thirty years; that ever since leaving the army he has resided at the missions of San Jose and Santa Clara; that he lived at the pueblo of San Jose with his parents for more than twenty years prior to 1801; and whilst in the army, and since he left it, has often been at the pueblo. Has heard it said that the pueblo lands extended from the Llagas to the Calera; but never heard of any proclamation setting them apart; the river "Guadalupe" was said to be the boundary on the west, and the summit of the mountains on the east. Whenever a proclamation was sent by the government, it was usual to notify the people of it.

Witness heard of the boundaries above described as those of the pueblo lands before he joined the army.

The lands within these limits were occupied by the inhabitants of the pueblo in common, from the time witness first went to the pueblo up to the year 1830. Witness knows of only one monument to mark the boundaries, and that was a monument of stones to mark the dividing line between the mission of Santa Clara and the pueblo.

This monument was about one and a half leagues from the source of the Guadalupe, and very close to the Capitancillos; it consists of a pile of stones, and is there now; it was erected in the year 1790, by the Indians of the mission, under the charge of the mayor, Douro, of the mission; witness was present when they were building it, and saw no one there but the Indians and the mayor Douro; has seen it often since then.

It was put there to prevent the people of the pueblo from coming with their cattle beyond that limit; rodeos were held in the pueblo prior to 1801; the cattle were pastured in common, and the owners of them assembled at the rodeos; rodeos were held every week, and were held by order of the alcalde; on holding a rodeo, the cattle were brought in from all the lands within the limits of the pueblo, and those which were recognized as such, were the limits above described.

The place called "Calera," referred to by witness as one of the boundaries, is near to the place where Jose Higuera formerly lived.

The defendants then offered in evidence a duly certified transcript of the proceedings in the case of Antonio Chaboya *v.* The United States, being the same proceedings on which the patent given in evidence is founded, and at the time offered to prove that the grant

SAN FRANCISCO, December 31st, 1853.

In the same case, the deposition of Jose Ramon Mesa, a witness in behalf of the claimant, taken before commissioner Thompson Campbell, was filed.

(Vide page 6 of this transcript.)

SAN FRANCISCO, January 4th, 1854.

In the same case, the deposition of Antonio Maria Pico, a witness in behalf of the claimant, taken before commissioner Alpheus Felch, was filed.

(Vide page 10 of this transcript.)

SAN FRANCISCO, October 10th, 1854.

Case No. 93 was submitted without argument, and taken under advisement.

SAN FRANCISCO, October 17th, 1854.

In the same case, commissioner Alpheus Felch delivered the opinion of the board, confirming the claim.

(Vide page 47 of this transcript.)

And the following order was made, to wit:

(Vide page 48 of this transcript.)

SAN FRANCISCO, October 24th, 1854.

In the same case, the counsel for the claimant filed the following affidavit, to wit:

(Vide page 42 of this transcript.)

Ordered: that the record be amended, and that the said deposition be filed in case No. 93, in accordance with the affidavit.

Petition.

Before the honorable the commission to ascertain and settle private land claims in the State of California.

Antonio Chaboya, a citizen of said State, gives notice that he claims a tract of land therein, situated in the county of Santa Clara, with the boundaries shown in the annexed map, or plan, and known by the name of Yerba Buena of Socayre.

The claimant went into possession of said land in the year , by permission of the authorities of the municipality of San Jose de Guadalupe, to the commons of which town it was supposed to belong, and on the 25th of November, 1833, his right to the same was recognized, and a decree to serve him for title thereto given in his behalf by Don Jose Figueroa, political chief or governor of California, and as such authorized to make said decree, and the claimant has ever since lived on, occupied, and possessed said land undisturbed.

valley, and thence northward to the point of beginning; that these were the boundaries described by Gulnac, and he has heard many persons in the pueblo speak of these as the original boundaries. He further testified that he knows the land in controversy in this suit, and that it is within the limits of the pueblo lands above described.

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This monument was about one and a half leagues from the source of the Guadalupe, and very close to the Capitancillos; it consists of a pile of stones, and is there now; it was erected in the year 1790, by the Indians of the mission, under the charge of the mayor, Douro, of the mission; witness was present when they were building it, and saw no one there but the Indians and the mayor Douro; has seen it often since then.

It was put there to prevent the people of the pueblo from coming with their cattle beyond that limit; rodeos were held in the pueblo prior to 1801; the cattle were pastured in common, and the owners of them assembled at the rodeos; rodeos were held every week, and were held by order of the alcalde; on holding a rodeo, the cattle were brought in from all the lands within the limits of the pueblo, and those which were recognized as such, were the limits above described.

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The original of the papers before mentioned exist in the archives of the former government of California; a copy of the certified copy of said decree, which was furnished to claimant by direction of said Governor Figueroa, with a translation of the same, and a copy of a map or plan of said land, are herewith presented, marked "A."

The claimant relies on the documentary testimony above referred to, and on such other testimony as he may obtain.

There is no conflicting grant to said land, or to any part thereof, in the knowledge of the claimant.

JONES, TOMPKINS & STRODE,
Attorneys for Claimant.

Filed in office, March 9, 1852.

GEORGE FISHER,
Secretary.

Recorded, Journal, vol. 1, page 327.

GEORGE FISHER,
Secretary.

Office of the United States Board of Land Commissioners.

SAN FRANCISCO, Dec. 10, 1853.

This day, before Commissioner Thompson Campbell, came Juan B. Alvarado, a witness on behalf of the claimant, Antonio Chaboya, petition No. 93, and being duly sworn, his evidence being given in Spanish, was interpreted by the secretary as follows:

Deposition of Juan B. Alvarado.

Question 1. What is your name, age, and place of residence?

Answer 1. My name is Juan B. Alvarado; I am 44 years of age, and I reside in Contra Costa county.

Question 2. Look on the document now shown you, and marked A. T. C., and annexed to this deposition, and state whether you are acquainted with the handwriting of Alvarado, J. Castro, Manuel Jimeno, and Jose Castro; and if so, state your means of knowledge, and whether their signatures, where they appear on said document, are in their proper handwriting.?

Answer 2. I have examined said document, and am acquainted with the handwriting and signatures of the persons therein named, having seen them all frequently write and sign their names, and recognize their signatures wherever they occur on said document as their genuine signatures, and that of Alvarado is my own signature; I signed the said paper in two places, at the respective dates as they appear on said document, as the governor of California.

Question 3. How long has the claimant occupied the premises in the case?

Answer 3. I was never on the premises myself, but was satisfied

officially from the reports that he was for some time in the occupancy at the time the grant was made.

Questions by Associate Law Agent.

Question 1. Do you recollect the reason why you did not give the claimant in the case a title in the ordinary form?

Answer 1. Because the party did not ask for a formal title, and he was satisfied with the decree as made. This is what I now believe to be the case, after an examination of the papers. In some cases the parties were satisfied with a title in this form, and never returned the espediente to have the title formally issued, and I believe this was the case with the grantee in this case.

Re-examined by Claimant's Counsel.

Question 1. Did you know officially, from information taken, of the existence of a grant or permission to settle and occupy the lands now claimed, made by Jose Figueroa, governor, anterior to the date of your decree of concession?

Answer 1. I did know officially of the existence of such a grant.

Question 2. Look on the paper now shown you, and marked T. C., No. 1, annexed to this deposition, and state whether you are acquainted with the handwriting of Agustin N. Zamorano; and if so, state your means of knowledge, and whether his name, where it appears on said paper, is written in his handwriting.

Answer 2. I have examined the said paper, and I am acquainted with the signature of Agustin N. Zamorano, having frequently seen him write and sign his name, and I recognize the signature on said paper as being his genuine signature. At the date of this document Zamorano was secretary of the government of California.

JUAN B. ALVARADO.

Sworn to and subscribed before me, this 11th day of December, A.D. 1853.

THOMPSON CAMPBELL,
Commissioner.

Filed in office, December 10, 1853.

GEORGE FISHER,
Secretary.

Recorded in Ev. Book, vol. 3, p. 505.

GEORGE FISHER,
Secretary.

Office of the United States Board of Land Commissioners, &c. &c.

San Francisco, December 31, 1853.

This day, before Commissioner Thompson Campbell, came Jose

Ramon Mesa, a witness in behalf of claimant Antonio Chaboya, petition No. 93, and being sworn, his evidence being given in Spanish, was interpreted by the secretary as follows:

Deposition of Jose R. Mesa.

Question 1. What is your name, age, and place of residence?

Answer 1. My name is Jose Ramon Mesa; I am 32 years of age, and I reside in the county of Contra Costa.

Question 2. Are you acquainted with the rancho called Yerba Buena o' Socayre, claimed by Antonio Chaboya; and if so, how long have you known it, and state all you know in regard to its occupation?

Answer 2. I have known it ever since I was a small boy; and since I have known it Antonio Chaboya has been on it with his family, having horses, sheep, and cattle, and cultivating the lands; at first he had wooden houses. I don't know what kind of a house he has at the present time.

Question 3. Are you acquainted with the boundaries of this rancho; and if so, describe them?

Answer 3. On the north it is bounded by the rancho of Higuera, and the punta del Roblar del Coyote; on the east by the mountain; on the south by the rancho of Abues and the Portesuelo de las Animas, and on the west by the rancho de las Bernales, called Santa Teresa.

Question 4. How much land is embraced within the limits you have described?

Answer 4. They embrace about three leagues.

Associate law agent present.

JOSE RAMON + MESA.
mark.

Sworn and subscribed before me, this 31st day of December, A.D. 1853.

THOMPSON CAMPBELL,
Commissioner.

Filed in office, December 31, 1853.

GEO. FISHER,
Secretary.

Recorded in Ev. B., vol. 3, p. 580.

GEO. FISHER,
Secretary.

San Francisco, February 17, 1853.

On this day, before Commissioner H. J. Thornton, came Juan Soto, a witness in behalf of the claimant Antonio Chaboya, petition No. 93, and was duly sworn, his evidence being interpreted by the secretary.

Deposition of Juan Soto.

Questions by Claimant.

Question 1. What is your name, age, and place of residence?

Answer 1. My name is Juan Soto; age, 66 years; living in San Jose.

Question 2. Do you know the rancho Yerba Buena, and anything of its possession?

Answer 2. I have known Antonio Chaboya, the claimant, to have had a house and lived on it, and to have occupied this place ever since 1821, or thereabouts, with horses and cattle, and lives there to this day.

Question 3. If you know the boundaries of this rancho, please state them?

Answer 3. On the is the little arroyo of Socayre, up to the Portesuelo de las Animas; thence a line along the foot of the Sierra, as far as the little stream called arroyo de los Alisas, along the side of the encinal and marsh, and a small lake near the pueblo of San Jose; the western boundary is the top of the hill along which at the base the arroya Socayre runs.

Question 4. Do you know whether these boundaries were fixed; by whom, and where?

Answer 4. These boundaries were fixed by the alcalde of San Jose, Salvio Pacheco.

JUAN + SOTO.

United States law agent present.

Sworn to and subscribed before me, this 17th of February, 1853, by making his mark.

HARRY J. THORNTON,
Commissioner.

Filed in office, February 17, 1853.

GEO. FISHER,
Secretary.

Recorded in Ev. B., vol. 2, p. 587.

GEO. FISHER,
Secretary.

Office of United States Board of Land Commissioners, &c. &c.

SAN FRANCISCO, January 3, 1854.

This day, before Commissioner Alpheus Felch, came Jose Noriega, a witness in behalf of claimant, Juan Jose Castro, petition No. 96, and after being duly sworn, his evidence being in Spanish, was interpreted by the secretary as follows:

Deposition of Jose Noriega.

Questions by Judge Hawes, attorney for the claimant.

Question 1. What is your name, age, and place of residence?

Answer 1. My name is Jose Noriega; my age is 56 years; I reside in the pueblo of San Jose, where I have lived twenty years.

Question 2. Do you know the rancho known by the name of Yerba Buena o' Socayre, occupied by Antonio Chaboya; if yea, how long have you known it; what are its boundaries; during what time and in what manner has it been occupied by said Chaboya?

Answer 2. I know that rancho, and have been acquainted with it about nineteen years. It is situated about a league and a half or more from the pueblo of San Jose.

It is bounded by the rancho of Joaquin Higuera on one side: Higuera's rancho is called Rancho de Pala; on another side it is bounded by a range of mountains called "Sierra de Pala," which separate this rancho from another called Rancho de la Canada de Pala, belonging to the Bernales and Castros; on another side the same mountains continue to the Portezuello, which is the boundary. The Laguna Seca is also the boundary on the same side, and below that it is bounded by the rancho called Santa Teresa, belonging to the Bernales, and the arroyo de Coyote, which extends to the point of beginning on the line of the Rancho de la Pala. The arroyo de Coyote separates the rancho Yerba Buena from the lands used by the pueblo of San Jose. The rancho de Pala is divided from the rancho Yerba Buena by the arroyo de los Alisas. Ever since I have known the rancho these boundaries have been recognized by the neighbors as the boundaries of it.

When I first knew the rancho Yerba Buena, said Chaboya was living on it with his family, and had horses and cattle there, and was cultivating enough of the land for the support of his family. The house which he then had on the place and in which he lived seemed to have been built several years before. He had a large family of about twenty children, all of whom, I believe, were born on that rancho; about ten of them are now living. He has continued to occupy the place from the time I first knew it, and to live on it without interruption to the present time, and is still living in the same house. He has occupied it ever since I knew it, claiming it to be his own, and it has always been recognized as such by the citizens.

Question 3. Please look on the map now here presented to you, being document marked "A," filed in office March 9th, 1852, George Fisher, secretary, heretofore filed in this case, and state whether the objects and boundaries described thereon are familiar to you or not, and whether you could go and point them out on the ground without any difficulty?

Answer 3. I have looked on the map, with the exception of the

mouth of the arroyo de los Alisas; the objects and boundaries laid down on the map are all familiar to me, and I could go at midnight and point them out. I do not know whether the mouth of said arroyo is on the rancho or not, or whether it is on the line of said rancho or not. The arroyo spreads out on the plain and does not run into any other stream.

Question 4. Have you, during your residence in San Jose, officiated in the capacity of alcalde or other municipal offices? if yea, please state whether, during the whole period you have known said rancho, it has or not been recognized by the municipal authorities of said pueblo, and the necinos thereof as the rightful property of Antonio Chaboya.

Answer 4. It has always been so known and recognized by the municipal authorities and necinos. The inhabitants of the pueblo every month brought their stock down to a certain place, and they were prohibited by the municipal authorities from entering on said rancho.

JOSE NORIEGA.

Mr. Greenhow, associate law agent, was present at the taking of this deposition, but declined to propound any questions to the witness.

Subscribed and sworn to before me this 3d day of January, A.D. 1854.

ALPHEUS FELCH,
Commissioner.

Filed in office, January 3d, A.D. 1854.

GEORGE FISHER,
Secretary.

Recorded in Ev. Book, vol. 3, p. 387.

GEORGE FISHER,
Secretary.

Office of the United States Board of Land Commissioners, &c., &c.

SAN FRANCISCO, January 4th, 1854.

This day, before commissioner Alpheus Felch, came A. M. Pico, a witness in behalf of the claimant Antonio Chaboya, petition No. 93, who being duly sworn, his evidence being in Spanish, was interpreted by the secretary.

Deposition of A. M. Pico.

Questions by Mr. Hawes, attorney for claimant.

Question 1. What is your name, age, and place of residence?

Answer 1. My name is Antonio Maria Pico; my age is forty-two,

and I reside in San Jose, California. I have lived there ever since 1831.

Question 2. Are you acquainted with the rancho known by the name of Yerba Buena o' Socayre and its boundaries; if yea, please state where it is situated, what are its boundaries, and if the map now here shown to you, being a part of document marked "Exhibit A," with the initials "J.C.," annexed to the deposition of Juan B. Alvarado, heretofore taken and filed in this case, contains a correct designation of said boundaries, or not?

Answer 2. I am acquainted with said rancho and its boundaries. I have known it since 1833. I have looked on said map, and I believe it contains a correct designation of the boundaries of said rancho. The same is situated near the pueblo of San Jose, a league and a half more or less from said pueblo. The boundaries of said rancho are as follows: It is bounded on the north side by the arroyo de los Alisas, which divides this land from the rancho of Joaquin Higuera. This arroyo was assigned by me as the boundary when I gave the juridical possession of said Higuera's rancho to him. On the east side it is bounded by the sierra de la Canada de Pala, which divides it from the rancho of the Bernales and Castros, called rancho de la Canada de Pala. On the south it is bounded by the Portezuelo and the rancho of the Bernales; on the west it is bounded by the arroyo del Coyote. These boundaries have been recognized as the boundaries of said rancho ever since I knew the place, which was in 1833, and I, as one of the municipal authorities of San Jose, have always so recognized them. I have held an office there ever since 1835 down to 1849.

Question 3. Please state what you know of the occupancy of said rancho by said Antonio Chaboya.

Answer 3. Said Chaboya was on the place before 1835. In 1835, I was on the place, and said Chaboya was living upon it with his family, and was cultivating a sufficient portion of the land for the use of his family, and had about three thousand head of cattle, and about one hundred brood mares and horses broken to service. He occupied the place as owner, and it was generally recognized as his. I, as one of the municipal authorities, so recognized it.

From the time I first knew of his occupying it as above mentioned, he has had a house on it, and has lived there with his family continuously and without interruption, and still continues to live on and cultivate the premises. He has had above twenty children, of whom about ten are living, who were born on said rancho.

ANTONIO M. RICO.

Mr. Greenhow, associate law agent, was present at the taking of this deposition, but propounded no questions.

Subscribed and sworn to before me, this fourth day of January, A.D. 1854.

ALPHEUS FELCH,
Commissioner.

Filed in office, January 4, 1854.

GEO. FISHER,
Secretary.

Recorded in E. B. vol. 3, p. 588.

GEO. FISHER,
Secretary.

A. T. C.

Espediente.

Promovido por Dn. Antonio Chaboya en pretencion de pararje nombrado Yerba Buena, en la demarcacion del pueblo de San Jose Guadalupe.

Ano de 1840.

Exhibit A. T. C., annexed to deposition of Juan B. Alvarado, Dec. 10, 1853. *Geo. Fisher, secretary.*

Sello Terceo, Dos Reales.

Habilitado provincionalmente por la aduaua maritima del puerto de Monterey en el departamento de las Calfornias, para las anos de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO. [SEAL.]

MONT'Y, Eu. 5, de 1840.

Infs el Sor Prefecto del 1er distuto leque le paresca conveniente sobre el contenido de esta instancia.

ALVARADO.

Exmo Sor Gobernador.

Antonio Chabolla, natural de este departamento y recino del pueblo de Sn Jose Guadalupe, ante N. E. respectuosamte, digo que desde el ano de 1833, ocupo el parage nombrado la Yerba Buena cituado en la jurisdicion de altro pueblo, confirme con la consecion que me hizo en 25 de nore del mismo ano el Sor General Don Jose Figueroa, gefe supr. politico y comandte, general de territorio, como consta por los documentos que a V. E. acompana y teniendo dicho concesion el caracter de provicional con condiciones grabosa que perjudican notablemente mis intereses o la vez que yo hi fabricado casa hecho labores y puesto mis bienes de campo, he de merecer de V. E. se digne conceder me un propiedad el mencionado parage de Yerba Buena en estencion de seis sitios de ganado mayor colindante por el sur por el Portezuelo de las Animas, por el Norte con el torreno de Dn. Joaquin Higuero y con la Laguna Seca del mismo pueblo, por en este con la conchilla de la sierra inmediata y por el Oeste con el

rancho de los Bernales y punta del Roblar, en las sercanias del arollo, del Collote un terreno ni pertenese o los ejidos del pueblo.

P. T. A. V. E. Suplico se sina to mar en consideracion mi pedido concediendo me en propriedad el referido terreno de que recibire gracia y justicia.

ANTONIO OHABOYA.

MONTEREY, Enero 4, de 1840.

Sor Gobernador.

La prefectura de mi cargo han examinado de tenidamente la presente solicitud y constanido lo que el escrito todo lo que espona en ella el ciudadano Antonio Chaboya sobre que por algunos anos ha poseido el parage, nombrado la Yerba Buena los limites que senala en su peticion, asi que no pertenice á particular ni pueblo por que al de Sn. Jose Guadalupe, no tiene aun senalados ejidos con arreglo á las leyes, es de parecer que N. E. se seiva.

Sello Cuarto Una Cuartilla.

Habilitado provicionalmente por la Aduana Marita del puerto de Monterey, en el departamento de las Californias, para los anos de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ALVARADO. ANTONIO MARIA OSIO.

Consederle en propriedad al mismo Sor Chaboya los seis sitios de ganado mayor que pertenese arreglandose ó los linderos que espe-resa en su misma instancia.

Pueblo de San Jose de Castro.

JOSE CASTRO.

Febrero 17 de 1840.

MONTEREY, Febó. 24 de 1840.

Nista la presente solicitud los documentos que acompanar con las informes, practicadas y todo lo demas que se turo presente concedo en propriedad el ciudadano Antonio Chaboya, el parage nombrado Yerba Buena, situado en la jurisdicion del pueblo de San José Guadalupe en la estencion de seis sitios de ganado mayor, poco mas ó menos, de que tiene zó tomada posesion conforme los limites que espresa en su solicitud.

[SEAL.] JUAN B. ALVARADO.

MONTEREY, Noviembre 25 de 1833.

En rieto de este espediente y del informe que antecede del ayuntamiento de Jan José, librese orden al alcalde de aguel pueblo para que permita que el becino Antonio Charolla fabrique casa, cultive el terreno que pueda y mantenjo sus ganados en el parage nombrade la

Llerra buena pertenesiente á los ejidos ó funde legal de dicho pueblo, entendiendose esta concesion, sin perjiucio del comun en cuanto al gobr. de pastos, aguas, maderas lena ja y sugeto á las condiciones existentes y que subreciramte se impusieron. Mayansele saber á la parte, y libresé testimonio de este decreto para su resguado, archivandose el espedte.

El senor gefe superior politico del territorio Dn. Jose Figueroa, asi lomando decreto y firmo, de que doy feé.

JOSE FIGUEROA.
AGUSTIN N. ZAMARANO,
Secretario.

Concuerda con su original que existe en el espediente que obra en la secrataria de gobierno que esta á mi cayo. Ya peticion del vecino Antonio Chabolla doy este a 6 de Abril de 1839.

MANUEL JIMENO.

(For map, see original, page 377.)

MONTEREY, 20 de Mayo, 1839.

Conserbe este representacion, en su poder hasta que se arreglo los ejidos del pueblo de su venciudad.

J. CASTRO.

Sor Prefecto.

Antonio Chaboza natural de este pais ante V. S. como mas haga lugar enderecho me presenta y digo que en 25 de Noviembre del ano 1833, nu fere concedido un terreno nombrado Socayre y Yerba Buena, como consta por el documento que acompano, en cuyo sitio existe el numero de mas de cuatro cientos cabezas de ganado mayor de mi pertenencia y deseando digurar dichas bienes, necesite la posesion arreglado el citado documento.

Este terreno esta situado al oriente del pueblo de S. José y tendra en su mayor estension seis sitios de ganado mayor, colindando por el norte con el rancho de Pala, por el oriente con la canada de las Animas y Felipe, por el sur con el rancho de Sta Teresa y al oeste con las ejidas del pueblo de San José.

Por lo que rendidamento suplico se digne de mandar se me dé posecion que pido en lo que recibere gracia.

PUEBLO DE SAN JOSE, y Mayo 14, de 1839.

ANTONIO CHABOYA.

Filed in office, December 10, 1853.

GEO. FISHER,
Secretary.

(Here follows a map or plan.)

Translation of Grant and Espediente.

[SEAL.] MONTEREY, Nov. 25, 1833.

In view of this espediente and the informe of the ayuntamiento of San Jose which precedes, let order be issued to the alcalde of that pueblo, that he permit the citizen Antonio Chabolla to build a house, cultivate the land which he can, and maintain his cattle in the place called Yerba Buena, pertaining to the ejidos or funda legal of the said pueblo, this grant being understood to be without prejudice to the Comun, so far as regards the enjoyment of the pasturage, waters, timber, feed, &c. (pastas, agnas, maderas, tena, &c.), and subject to the conditions existing, and which may be successively imposed. Make it known to the party, and give exemplification (testimonio) of this decree for his security, archiving the espediente.

The Senor Superior Polical Chief of the Territory, Don Jose Figueroa, thus ordered, decreed, and signed, which I authenticate.

JOSE FIGUEROA.

AGUSTIN N. ZAMORANO,
Secretary.

It agrees with the original, which exists in the espediente that is found (obra) in the secretaryship of government under my charge, and upon petition of the citizen Antonio Chabolla.

I give this 6th of April, 1839.

MANUEL JIMENO (Rubric).

Senor Prefect.

Antonio Charoya, native of this country, before your honor in the form most suitable in law (como mas haya lugar en derecho), present myself and say, that on the 25th November 1833, a (tract) of land was granted to me, named Socayre and Yerba Buena, as is evidenced by the document accompanying, in which sitio exists the number of more than four hundred head of horned cattle (ganado mayor) belonging to me; and desiring to secure the said property, it is necessary that I have the possession given conformably to (arreglado) the said document. This land is situated at the east of the pueblo of San Jose, and may have in its utmost extent six sitios of ganado mayor, bounded on the north by the rancho of Pala, on the east by the Canada de las Animas and San Felipe, on the south by the rancho of Santa Teresa, and on the east by the ejidos of the pueblo of San Jose.

Wherefore, I humbly beseech you be pleased to order that the possession be given me which I ask, in the which I shall receive favor, &c.

PUEBLO OF SAN JOSE, May 14, 1839.

MONTEREY, 20 May, 1839.

Keep in your possession this representation, until the ejidos of the pueblo of your residence be regulated.

J. CASTRO.

Third Stamp, Two Reals.

Habilitated provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

XIMENO.

[SEAL.] ANTONIO MARIA OSIO.

MOST EXCELLENT SENOR GOVERNOR:

I, Antonio Chabolla, a native of this department, and citizen of the pueblo of San Jose Guadalupe, before your excellency respectfully say, that since the year 1833 I have been occupying the place named Yerba Buena, situated in the jurisdiction of said pueblo, in conformity with the concession which Don Jose Figueroa, governor and commandant-general of the territory, made to me on the 25th of November, of the same year, as appears from the documents which I annex hereto, and the said concession having the character of a provisional one, with burdensome conditions, which are notably prejudicial to my interests; while I have built a house, cultivated, and put on my stock (bienes de rampo), I have to solicit that your excellency will grant me the aforesaid place, Yerba Buena, in property, to the extent of six square leagues (six sitios de ganado major), bounded on the south by the Portezuelo (a narrow pass between mountains) de los Animas; on the north by the land of Mr. Joaquin Higuera, with the dry lagoon of the said pueblo; on the east by the top (cuchilla) of the adjoining hills, and on the west by the rancho of the Bernales, and the points of the del Roblar (oak point), in the vicinity of Coyote creek, which land does not pertain to the common of the pueblo.

Therefore, I supplicate your excellency that you be pleased to take into consideration my petition, granting me the said land in property, wherein I shall receive favor and justice.

his
ANTONIO ✕ CHABOYA.
mark

MONTEREY, January 4, 1840.

(Marginal Decrees.)

MONTEREY, Jan. 5th, 1840.

Let the senor prefect of the first district inform what he may see proper upon the contents of this petition.

ALVARADO.

MOST EXCELLENT SENOR GOVERNOR:

The prefecture of my charge has cautiously examined the present solicitation; and it being made to appear to this prefecture that all which the citizen Antonio Chaboya set forth in it is true, about his having possessed the place called Yerba Buena for some years, the limits which he designates in his petition, as well as that it does not belong to any individual or pueblo, although to the pueblo of San Jose Guadalupe no common has yet been assigned according to the laws, (this prefecture) is of opinion that your excellency may, if pleased, grant in property to the said Senor Chaboya the six sitios de ganado mayor when he applies, to be subject to the boundaries which he expresses in his said application.

JOSE CASTRO.

PUEBLO DE SAN JOSE DE CASTRO, February 17, 1840.

MONTEREY, February 24, 1840.

In view of the present solicitation and the documents accompanying it, with the reports had thereon, and all the rest which was presented, I grant in property to the citizen Antonio Chaboya the place called Yerba Buena, situated in the jurisdiction of the pueblo of San Jose Guadalupe, to the extent of six leagues (six sitios de ganado mayor), a little more or less, of which he has already taken possession, according to the limits which he expresses in his application.

JUAN B. ALVARADO.

I, George Fisher, secretary to the board of the U. S. Land Commissioners, &c., do hereby certify that the foregoing is a true, full, and correct translation of a Spanish document of the purport as above set forth, marked "Exhibit A. T. C.," exhibited and filed in case No. 93, on the docket of the said board, now in this office.

Office of the secretary of said commission, San Francisco, this 11th day of October, 1854.

GEO. FISHER,
Secretary.

Filed in office December 10, 1853.

GEO. FISHER,
Secretary.

Grant. Exhibit T. C., No. 1, annexed to Deposition of Juan B. Alvarado.

Sello Tercero, dos Reales.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey, para los anos de mil ochocientos treinta y tres y mil ochocientos treinta y cuatro.

FIGUEROA.

JOSE RAFAEL GONZALES.

Monterey, Noviembre veinte y Cinco de mil ochocientos treinta y tres, en vista de este expediente y del informe que antecede del ayuntamiente de San José librese, orden al alcalde de a quel pueblo para que permita que al recino Antonio Chaboya fabrique casa, cultive, el terreno que pueda y manteuga sus ganados en el parage nombrado la Yerba Buena perteneciente, á los ejidos ó fundo legal de dicho pueblo, entendiendose esta consecion siu perjuicio del comun en cuanto al goso de pastos, aguas, maderas, lena, &c., y sugeto á los condiciones existentes y que subcesirante se impusieron. Hagasele saver á la parte y librese testimonio de este decreto para su resquado archivandose el expedientc, el Sor gefé superior politico del territorio, Don José Figueroa, asi lomando, decreto y firmó, de que doy feé.

JOSE FIGUEROA.
AGUSTIN VICENTE ZAMORANO,
Secretario.

Concuerda a la letra con su original del que hise sacar este testimonio para resguardo del iteresado.
Monterey, veinte y seis de Novr. de mil ochocientos treinta y tres.
AGUSTIN N. ZAMORANO.

Filed in office, March 15, 1853.
GEO. FISHER,
Secretary.

Third Seal, Two Reales.

Provisionally provided by the administration of the marine department of Monterey, for the years 1833 and 1834.
FIGUEROA.
JOSE RAFAEL GONZALES.

Translation of Grant.—Exhibit T. C., No. 1.

MONTEREY. the 25th November, 1833.

Upon the dispatch and the foregoing report of the provincial council (ayuntamiento) of San Jose, let an order be passed to the alcalde of that town, to permit that the citizen Antonio Chavoya may build a house, cultivate what land he is able, and continue feeding his cattle on the place called la Yerba Buena, belonging to the liberties or legal allotment of the said town.

This concession to be understood as without prejudice to the public, as far as regards the use of pasture, water, timber, firewood, &c., and subject to the existing conditions and those which may be hereafter imposed.

Let this be known to the party interested, and a copy of this decree be given to him for his safety, the record being archived.

The honorable the superior political chief of the territory, Don Jose Figueroa, thus ordered, decreed, and signed, which I testify.

JOSE FIGUEROA.
AGUSTIN VICENTE ZAMORANO,
Secretary.

(For map, see original, page 390.)

This is an exact copy of the original from which I caused the same to be made for the safety of the party interested.

MONTEREY, the 26th of Nov. 1833.

AGUSTIN V. ZAMORANO.

Filed in office, March 15, 1853.

GEO. FISHER,
Secretary.

Petition for Re-hearing.

Case before the Board of United States Land Commissioners.

A. CHABOLLA
v.
THE UNITED STATES. } No. 93.

This petition of the defendant respectfully shows to this board, that since the decision herein, certain facts have come to the knowledge of the agents of the government, of which they were wholly unaware at the time said case was submitted to the board for adjudication; a part of which facts are exhibited in papers marked A., B., C., D., E., and F., annexed to the affidavit of J. H. McKune. Another fact is stated in an affidavit filed herein, to the effect that the land confirmed contains about seven leagues of land.

Your petitioner represents, that all the persons whose names appear in the document marked A. T. C., filed herein, are living, except Manuel Jimeno; and it is believed his name therein written is a forgery, and that if this case be again restored to the docket for further testimony, by granting the prayer of this petition, this forgery can be made to appear by competent testimony.

This petition charges that the above-mentioned facts, taken in connection with the suspicious character of the said paper, marked A., establish the conclusion that the said document is forged and simulated, and should be set aside and held for nought.

Your petitioner asks that the decree of confirmation entered herein and the order submitting the case be vacated and set aside, and that the case be restored to the docket for further testimony.

J. H. McKUNE,
U. S. Law Agent.

Filed in office, Jan. 16, 1855.

GEO. FISHER,
Secretary.

Affidavit of J. H. McKune.

No. 93. A. Chabolla, claimant.

J. H. McKune says, on oath, that he has examined the name of Manuel Jimeno, as it appears in the paper marked Exhibit A., annexed to the deposition of Juan B. Alvarado, and compared it with the signature of Jimeno, former secretary under the local government of California, as they appear in various documents filed in this commission, and upon such comparison his opinion is, the signature in said Exhibit A. was not written by the same person as most other authentic signatures of that officer in this commission; that he has submitted said signature in Exhibit A. to J. B. Crockett, Esq., who informed affiant he had seen said Jimeno, former secretary, sign his name, and after comparing said last-mentioned signature with one which said Crockett saw Jimeno write, he expressed the opinion that the signature in said Exhibit A. was not genuine.

Affiant says, that if this case should be again opened for further testimony, he believes he can establish, by the evidence of said Crockett and other competent witnesses, that the said signature appearing in Exhibit A. is a forgery.

Affiant, when this case was submitted, had no knowledge of the facts which have since been brought to his notice, inducing a suspicion of the simulated character of said Exhibit A.

J. H. McKUNE,
U. S. Law Agent.

Sworn to and subscribed before me, Jan. 16, 1855.
R. AUG. THOMPSON.

Filed in office, January 16, 1855.
GEO. FISHER,
Secretary.

Exhibit A., annexed to affidavit of J. H. McKune.

Case No. 93. Before the Board of Land Commissioners.

ANTONIO CHABOLLA
v.
THE UNITED STATES.

Peter O. Minor, being duly sworn, deposes and says, that he has been a resident of the county of Santa Clara, State of California, since November, 1849, that he has occupied, and yet does, a portion of the land being within the limits of the so-called Yerba Buena rancho, confirmed by said board to Antonio Chabolla, and that I have lived upon and occupied the same, for more than two years past; that I was induced to settle upon said place, by the representations of several old citizens of San Jose, declaring to me it was public

land, and that the only title Chabolla had, was that of the governor or ayuntamiento (or city council) of San Jose, to occupy about a league of said land for grazing and agricultural purposes, and that I was not aware until recently that there was an existing valid title upon the same; and I do expect it can be proved that the title upon which said board granted a confirmation was a fraudulent one; and give for such belief, the following reasons:

1st. That Messrs. Wallace & Ryland, attorneys of this place, who were the attorneys employed by said Chabolla, in presenting the first claims to said board, have declared to me (that is, Mr. C. T. Ryland), that when Chabolla first showed them his title-papers, they informed him they were of little account, and distinctly asked him if they were all he had or held; and that he informed them they were all the papers he had (and which are, as I am informed and believe, the permit of the said governor or ayuntamiento, now on file with the secretary of this board); and I further depose and say, that I have been since informed by the said Ryland, that he knew nothing of any other title-papers of the said Chabolla, nor were any other presented by them to said board than the said permit; and that they knew nothing of the subsequent papers presented to said board some time in December last, 1853. Affiant further states, that he requested of said Ryland an affidavit of the facts herein, and that he declined giving it, upon the ground of having been employed as attorney for said Chabolla, but would attend before the board, if requested by them, and give his testimony. Affiant further expects to prove, by the evidence of Don Antonio Sernol, who has resided in the county for more than thirty years, and of Julian Hawks, who has resided here for about twelve years, that they never heard or were aware until lately that the said Chabolla ever had any other papers or title, except the one (permit) granted him by the governor or ayuntamiento of the city or pueblo de San Jose; and believing that the title upon which said board decreed a confirmation is a false or forged one, he asks that the said decree may be reconsidered, and that the evidence of the said Wallace, Ryland, Sernol, and Hawks, may be heard before you, and such action in the matter as may be right.

Affiant further states, that on the 22d day of October, 1853, the said Chabolla took up upon said premises, and the place he now resides upon, and upon which he has for many years resided, a pre-emption claim under the law of the State of California, in which he makes oath that there was no existing title upon the same, and which pre-emption claim is embraced within the limits of said confirmation.

And affiant further says, that he expects to prove by the evidence of the said persons and others, that the title-papers upon which said confirmation was made, are false and fraudulent.

State of California, County of Santa Clara.

On this first day of December, A.D. 1854, personally appeared before me, the county clerk in and for the said county, P. O. Minor, whose name is subscribed to the foregoing affidavit, and being by me duly sworn, says the matters and facts stated in the same are true, to the best of his knowledge and belief.

P. O. MINOR.

Sworn to before me, this 1st day of December, A.D. 1854, as witness my hand, with the seal of the County Court affixed.

[SEAL.] JOHN B. HEWSON,
Clerk.
By LEVI P. PECK,
Deputy Clerk.

Filed in office, January 16, 1854.

GEORGE FISHER,
Secretary.

Affidavit of J. H. McKune.

No. 93. Antonio Chabolla, claimant.

J. H. McKune says on oath, that he is informed and believes, that the land claimed in this case, and for which a decree of confirmation has been rendered, is of the extent of seven square leagues. That at the time the case was submitted, he had no such information, and was only so informed since the decision of the board. That if the decree of confirmation shall be set aside, he believes he can procure the necessary evidence to prove the fact as stated on information and belief, in time to submit the case again at an early day.

Subscribed and sworn to before me, this 27th day of December, 1854.

ALPHEUS FELCH,
Commissioner.

Filed in office, December 27, 1854.

GEORGE FISHER,
Secretary.

Affidavit of J. H. McKune, and Motion.

Case No. 93. Before the Board of U. S. Land Commissioners.

ANTONIO CHABOLLA
v.
THE UNITED STATES.

J. H. McKune, U. S. law agent, says on oath, that since the decision of the board, confirming the claim in the above-entitled case,

he has received the papers marked A., B., C., D., and F., hereby referred to and made a part hereof. That previous to the time when said case was decided, he did not know any of the facts set forth in said exhibits, and believes the associate law agent was equally unaware of said facts, and that if the decree of confirmation in this case should be set aside, and the case restored to the docket, he believes he can procure said facts in such a form, that they can be used as testimony in the case.

J. H. McKUNE.

Sworn to and subscribed before me, December 26, 1854.

R. AUG. THOMPSON.

Upon the foregoing affidavit, and upon the papers in the case, motion is made that the decree of confirmation entered herein be set aside, and that the case be restored to the docket for further testimony.

J. H. McKUNE,
U. S. Law Agent.

Filed in office, Dec. 26, 1854.

GEO. FISHER,
Secretary.

Affidavit of J. H. McKune.

No. 93. A. Chabolla, claimant.

J. H. McKune says on oath, that he has examined the name Manuel Jimeno as it appeared in the paper marked Exhibit A., annexed to the deposition of Juan B. Alvarado, and compared it with the signatures of Jimeno, former secretary under the local government of California, as they appear in various documents filed in this commission, and upon such comparison his opinion is the signature in said Exhibit A. was not written by the same person as most other authenticated signatures of that officer in this commission.

That he has submitted said signature in Exhibit A. to J. B. Crockett, Esq., who informed affiant that he had seen said Jimeno, former secretary, sign his name, and after comparing said last mentioned signatures with one which said Crockett saw Jimeno write, he expressed the opinion that the signature in said exhibit was not genuine.

Affiant says that if this case shall be again opened for further testimony, he believes he can establish by the evidence of said Crockett, and other competent witnesses, that said signature appearing in Exhibit A. is a forgery.

Affiant, when this case was submitted, had no knowledge of the facts which have since been brought to his notice, inducing a suspicion of the simulated character of said Exhibit A.

J. H. McKUNE,
U. S. Law Agent.

Sworn to and subscribed before me, Jan'y 16, 1855.
R. AUG. THOMPSON.

Filed in office, Jan'y 16, 1855.
GEO. FISHER,
Secretary.

Recorded in Journal, vol. 4, page 176.
GEO. FISHER,
Secretary.

Exhibit B., annexed to Affidavit of J. H. McKune.

Antonio Chabolla.

Know all men by these presents, that I, the undersigned Antonio Chabolla, have taken up a piece or parcel of land for the purpose of pre-empting and improving, and cultivating the same; said land is situated about six miles easterly from the city of San Jose, in Santa Clara county and State of California, described as follows, to wit: Commencing at a stake near a living spring (said stake bears S. 42° W. 66 links from an oak tree marked A.); thence running S. 58° 20′ W. (true course) 47.75 chains to a stake; thence S. 31° 40′ E. (true course) to a stake; thence N. 58° 20′ E. (true course) 47.75 chains, to a stake; thence N. 31° 40′ W. (true course) 33.50 chains, to the place of beginning; containing 160 acres, as surveyed on 21st day of October, 1853, by L. B. Healey, Esq., deputy county surveyor of Santa Clara county.

1st. The land as marked and described does not contain more than one hundred and sixty acres, and to the best of my knowledge and belief, the same is not claimed under any existing title.

2d. My intention is to comply with the requisitions of the law, so as to enable me to hold a pre-emption on the same.

3d. I have taken up no other claim under the act of the legislature of California, approved April 20th, A. D. 1852, entitled "An Act prescribing the mode of maintaining and defending possessory actions on the public lands in this State.

his
ANTONIO + CHABOLLA.
mark.

Witness: S. O. HOUGHTON.

State of California, County of Santa Clara, *ss.*

On this 22d day of October, A. D. 1853, personally came before me, recorder in and for the county aforesaid, Antonio Chabolla, who having by me duly sworn, through a competent and sworn interpreter, declared that he executed the same freely and voluntarily, and for the uses and purposes therein expressed, and that the facts set forth therein are true, to the best of his knowledge and belief.

[SEAL.] Given under my hand and private seal (no official seal having yet been provided) the day and year last above written.

S. A. CLARK,
County Recorder.

Filed for record at 10½ o'clock, A. M., October 22d, A. D. 1853.

S. A. CLARK,
Recorder.
By F. LEWIS,
Deputy.

County Recorder's Office, County of Santa Clara, State of California.

I hereby certify that the above and foregoing is a full, true, and correct copy of an instrument of writing. Antonio Chabolla's notice of pre-emption claim, now on record in Book "C" of claims, pages 10 and 11 in this office.

[SEAL.] Witness my hand and official seal hereto affixed, this the 19th of December, A. D. 1854.

S. A. CLARK,
County Recorder.
By F. LEWIS,
Deputy.

Filed in office, Jan'y 16, 1855.

GEO. FISHER,
Secretary.

Exhibit C., annexed to the Affidavit of J. H. McKune.

Antonio Chabolla to Manuel Castro.

This indenture, made this 26th day of January, 1854, by and between Antonio Chaboya, of the county of Santa Clara and State of California, of the first part, and Manuel Castro, of the county of Monterey and State aforesaid, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one thousand five hundred dollars, to him in hand paid by the said party of the second part, the receipt of which is hereby acknowledged and confessed, hath this day granted, bargained, and sold, and doth by these presents grant, bargain, and sell unto the said party of the second part, and unto his heirs and assigns forever, the following described piece of land, lying and being in the county of Santa Clara and State of California, and more particularly described as follows, to wit, commencing at a point on the rancho known as the "Yerba Buena" rancho, granted to me by the governor of the department of Upper California on the 24th day of February, 1840, which said point is called "Portezuelo de las Animas," thence running in a line so as pass through the Laguna Seca, to the outside boundary of my

rancho "Yerba Buena;" thence to the Coyote creek; thence down said creek and as far as the boundary, as now known, of the rancho Santa Teresa; thence with line of my rancho to the place of beginning; containing two leagues of land, being one-third of my rancho.

To have and to hold the aforesaid land unto him the said party of the second part, and to his heirs and assigns forever, free from the claim or claims of any and all persons claiming by, through, or under me.

In witness whereof I have hereunto set my hand and affixed my seal the day and date first above written.

his
ANTONIO ⋈ CHABOLLA.
mark

Attest,
A. C. CAMPBELL.

State of California, County of Santa Clara, *ss.*

On this, January 26, 1854, personally appeared before me, a notary public in and for said county, Antonio Chabolla, known to me to be the person described in and who executed the foregoing deed of conveyance, who acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

Witness my hand and notarial seal at said county the day and year above written.

[SEAL.]

L. ARCHER,
Notary Public.

Filed for record at $2\frac{5}{60}$ o'clock P.M., January 27, A.D. 1854.

S. A. CLARK,
Recorder.
By F. LEWIS,
Deputy.

Recorded at the request of Manuel Castro.

S. A. CLARK,
Recorder.
By F. LEWIS,
Deputy.

County Recorder's Office, County of Santa Clara, State of California.

I hereby certify that the above and foregoing is a full, true, and correct copy of an instrument of writing (Antonio Chaboya's deed to Manuel Castro) now on record in Book "G" of Deeds, pages 174 and 175, in this office.

Witness my hand and official seal hereto affixed, this the 19th day of December, A.D. 1854.

[SEAL.]

S. A. CLARK,
County Recorder.
By F. LEWIS,
Deputy.

Filed in office, January 16, 1855.

GEO. FISHER,
Secretary.

Exhibit D., annexed to the Affidavit of J. H. McKune.

Antonio Chabolla and William T. Wallace, and others, Agreement, &c.

Memorandum of an agreement made on the 6th day of July, 1853, between Antonio Chabolla of the first part, and William C. Wilson, William T. Wallace, and Caius T. Ryland of the second part, all of the county of Santa Clara and State of California, witnesseth: That the said party of the first party hath this day sold unto the said party of the second part, and their heirs and assigns forever, the one equal undivided one-third of a rancho situated in said county, lying in a southeasterly direction from the city of San Jose, and south of the Rancho de la Pala, and called Yerba Buena, being the same which was granted to the party of the first part by Governor Figueroa about the year 1832, and the said party of the first part undertakes and agrees that he will on demand made, convey to the said party of the second part, and to their heirs and assigns, a good and sufficient title to the said land hereby sold with proper covenants.

The consideration of the foregoing sale is the sum of one dollar in hand paid to the said party of the first part by the said party of the second part, the receipt whereof is hereby acknowledged, and the agreement made by the said William T. Wallace and C. T. Ryland, who are attorneys-at-law, that they will attend to the claim for the said land, now pending and presented in favor of the party of the first part, before the land commission of the United States at the city of San Francisco.

ANTONIO ⋈ CHABOLLA.

Witness to the signature of
Antonio Chabolla, who
cannot write his name,
but signs by a mark.
T. H. SWAIN.

State of California, County of Santa Clara, *ss.*

On this 6th day of July, A.D. 1853, personally came before me, recorder in and for said county, Antonio Chabolla, to me personally known to be the person described in and who executed the foregoing instrument of writing, who acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

[SEAL.] Given under my hand and private seal (there being no seal of office yet provided) this day and year last before written.

J. M. MURPHY,
County Recorder.
By S. O. HOUGHTON,
Deputy.

Filed for record, at 9¼ o'clock A.M., July 6, A.D. 1853.

J. M. MURPHY,
County Recorder.
By S. O. HOUGHTON,
Deputy.
Recorded by F. LEWIS,
Deputy.

Recorded at request of Wallace and Ryland.

J. M. MURPHY,
Recorder.
By F. LEWIS,
Deputy.

County Recorder's Office, County of Santa Clara, State of California.

I hereby certify that the above and foregoing is a full, true, and correct copy of an instrument of writing (agreement between Anto. Chabolla and W. C. Wilson, W. T. Wallace, and C. T. Ryland) now on record in Book "F" of Deeds, pages 252 and 253, in this office.

[SEAL.] Witness my hand and official seal hereto affixed, this the 19th day of December, 1854.

S. A. CLARK,
County Recorder.
By F. LEWIS,
Deputy.

Filed in office, Jan. 16, 1855.

GEO. FISHER,
Secretary.

Exhibit E., annexed to Affidavit of J. H. McKune.

R. Haley to S. M. Hart.

This indenture, made this day of December, A. D. eighteen hundred and fifty-four, between Robert Haley, of the county of San Francisco, United States, of the one part, and Samuel M. Hart, of the city of Cincinnati, State of Ohio, of the other part, witnesseth: That the said Robert Haley, for and in consideration of the sum of seven thousand dollars, to him in hand paid by the said Samuel M. Hart, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed and confirmed, and by these presents doth bargain, sell, convey and confirm unto the said Samuel M. Hart, his

heirs and assigns, forever, the right, title and interest that the said Robert Haley has or may acquire of, in, and to that tract or parcel of land lying and being in the county of Santa Clara, in the State of California, and known and distinguished as being part of the rancho Yerba Buena, granted to one Antonio Chabolla, by the governor of California, the 24th day of February, eighteen hundred and forty, and bounded and described by beginning at a point two hundred yards south of an oak tree situate from one to two miles south of the northern boundary of said rancho, and about same distance from the Laguna Seca, and one hundred and forty-three feet northwesterly from an oak with its limbs cut off, and is just westerly from a small house about two hundred yards; and the said tree was marked by S. B. Hart and Jacob A. Morenhout, on the 29th day of November, A. D. 1854, with three cuts on the westerly side of the tree, and three on the southerly side; thence running easterly in a direct line to a point two hundred yards north of a squatter's house, situate southerly from the residence of the said Chaboya, and it is the first house after passing the two small houses next to said Chaboya's residence, and occupied by his family or part of them, as you travel southerly from Chaboya's house on the brow of the mountain; thence in a direct line continued from the point first started from, easterly to the eastern boundary line of said rancho, this being the first line bounding the northern part of the land hereby conveyed. Now, to finish the boundaries of the land hereby conveyed, you must come back to the point first started from, and then continue that line direct westerly until it intersects the easterly line of the lands conveyed by said Chaboya to Manuel Castro; thence running southerly along the line of said Castro's land, or that conveyed to Castro by said Chaboya, one Spanish league; thence easterly, parallel with the first line, direct to the eastern boundary line of said rancho; thence northerly along the eastern boundary line of said rancho until it intersects the first line herein described—reserving, however, to the said Antonio Chaboya, his heirs and assigns, one undivided half of the silver mine on the lands hereby conveyed, which were denounced according to the Mexican law by the said Antonio Chaboya, together with sufficient lands connected with said mine to work the same, together with all improvements and appurtenances whatsoever to the same belonging or in any wise appertaining unto him, the said Samuel M. Hart, his heirs and assigns, forever.

To have and to hold the aforesaid conveyed lands, tenements and hereditaments, unto him the said Samuel M. Hart, his heirs and assigns, forever, in as full and ample a manner as the said Robert Haley might, could, or ought to convey the same.

This conveyance, however, is subject to a mortgage executed by the said Robert Haley to Antonio Chaboya and dated to-day.

In witness whereof, the said Robert Haley hath hereunto set his

hand and seal, at the city of San Francisco, California, the 2d day of December, A. D. 1854.

ROBERT HALEY. [SEAL.]

Executed in presence of
A. G. RANDALL.

State of California, United States, County of San Francisco, *ss.*

This 2d day of December, A. D. 1854, personally appeared before me, a notary public in and for the city and county aforesaid, Robert Haley, known to me to be the individual named in, and who executed the foregoing instrument, and acknowledged to me that he executed the same voluntarily, and for the uses and purposes therein contained.

In testimony whereof, I have hereunto set my hand and official seal, the day and year last above written.

A. G. RANDALL,
Notary Public.

Filed for record at request of S. B. Hart, at $4\frac{20}{60}$ o'clock, P.M., December 5, A. D. 1854.

S. A. CLARK,
Recorder.

Recorded by F. LEWIS,
Deputy.

County Recorder's Office, County of Santa Clara, State of California.

I hereby certify, that the above and foregoing pages (numbered 1, 2, 3, and 4), contain a full, true and correct copy of an instrument of writing (R. Haley's deed to S. M. Hart), now on record in Book G. of deeds, on pages 432 and 433, in this office.

[SEAL.] Witness my hand and official seal hereto affixed, this the 19th day of December, A.D. 1854.

S. A. CLARK,
County Recorder.

By F. LEWIS,
Deputy.

Filed in office, January 16, 1855.

GEO. FISHER,
Secretary.

Before the U. S. Board of Land Commissioners for California, Claim No. 93, Antonio Chaboya, for the place called "Yerba Buena o' Socayre."

Affidavit of Horace Hawes.

County of San Francisco.

Horace Hawes, being duly sworn, says, that as counsel for claimant

in this case, he produced as a witness, Jose Noriega, whose deposition was taken before Commissioner Felch, January 3, 1854, but by mistake said deposition has been filed in case 96, to which it has no application whatever. Deponent is, and was at the time of taking said deposition, also counsel for claimant in said case 96, and supposes that the said mistake occurred in consequence of the fact that depositions were being taken in both cases on the same day, and that the papers in both were lying on the table for the commissioners at the same time. Deponent asks that the said deposition may be ordered to be filed and properly entered in this case, 93, where it belongs.

HORACE HAWES.

Sworn and subscribed before me, October 24, 1854.

S. B. FARWELL,
Commissioner.

Filed in office, October 24, 1854.

GEO. FISHER,
Secretary.

Exhibit F., annexed to Affidavit of J. H. McKune.

A. Chaboya to R. Haley.

This indenture, made this first day of December, A.D. eighteen hundred and fifty-four, between Antonio Chaboya, of the county of Santa Clara, in the State of California, United States, of the one part, and Robert Haley, of the county and city of San Francisco, California, of the other part, witnesseth: that the said Antonio Chaboya, for and in consideration of the sum of seven thousand dollars to him in hand paid by the said Robert Haley, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth bargain, sell, convey, and confirm, unto the said Robert Haley, his heirs and assigns, forever, the right, title, and interest that the said Chaboya has or may acquire of, in, and to that tract or parcel of land, lying and being in the county of Santa Clara, in the State of California, and known and distinguished by being part of the rancho Yerba Buena, granted to said Chaboya by the governor of California, the 24th day of February, eighteen hundred and forty, and bounded and described by beginning at a point two hundred varas south of the northern boundary of said rancho, and about same distance from the Laguna Seca, and one hundred and forty-three feet northwesterly from an oak tree with limbs cut off, and is just westerly from a small house about two hundred yards; and the said tree was marked by J. B. Hart and Jacob A. Morenhout, on the 29th day of November, A.D. 1854, with three cuts on the westerly side of the tree, and three on the southerly side; thence running easterly in a direct line to a point two hundred yards north of a squatter's house, situate southerly from the residence of the

said Chaboya, and is the first house after passing the two small houses next to said Chaboya's residence, and occupied by his family, or part of them, as you travel southerly from Chaboya's house on the brow of the mountains; thence in a direct line continued from the point first started from easterly to the eastern boundary line of said rancho; this being the first line bounding the northern part of the land hereby conveyed.

Now, to finish the boundaries of the land hereby conveyed, you must come back to the point first started from, and then continue that line westerly until it intersects the easterly line of the land conveyed by said Chaboya to Manuel Castro; thence running southerly along the line of said Castro's land or lot conveyed to Castro by said Chaboya, one Spanish league; thence easterly parallel with the first line direct to the eastern boundary line of said rancho; thence northerly along the eastern boundary line of said rancho until it intersects the first line herein described; reserving, however, to the said Antonio Chaboya, his heirs and assigns, one undivided half of the silver mine on the lands hereby conveyed, which were denounced according to the Mexican law by the said Antonio Chaboya, together with sufficient lands connected with said mine to work the same; together with all improvements and appurtenances whatsoever to the same belonging or in anywise appertaining, unto him the said Robert Haley, his heirs and assigns, forever.

To have and to hold the aforesaid conveyed lands, tenements, and hereditaments, unto him the said Robert Haley, his heirs and assigns, forever, in as full and ample a manner as the said Antonio Chaboya might, could, or ought to convey the same; and the said Antonio Chaboya contracts that he has not in any manner incumbered or conveyed said lands hereby conveyed, and that he and his heirs will well and truly warrant the said lands to the said Robert Haley, his heirs and assigns, forever, against the claim or claims of all persons claiming by or through him the said Antonio Chaboya; and further, the said Antonio Chaboya contracts, that upon the patent issuing to him from the government of the United States for the lands hereby conveyed, the title which he may acquire from the United States of the lands hereby conveyed shall enure to the benefit of the said Robert Haley, his heirs and assigns forever.

In witness whereof, the said Antonio Chaboya hath hereunto set his hand and seal, at the city of San Francisco, California, this day of December, A.D. 1854.

his
ANTONIO ⋈ CHABOYA.
mark.

Testigo, MAN'L CASTRO.

Signed, sealed, and delivered,
in presence of J. B. HART.

State of California, United States, City and County of San Francisco, *ss.*

December 2d, A.D. 1854.

Then personally appeared before me, G. D. Hubert Sanders, a notary public, in and for the city and county aforesaid, Antonio Chaboya, known to me to be the person described in and who executed the foregoing instrument, and I translated the same to him in the Spanish language, and then he acknowledged to me that he understood the same, and that he executed the same voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my seal, the day and year last above written.

[SEAL.] G. D. HUBERT SANDERS,
Notary Public.

Filed for record (at request of J. B. Hart,) at 4½ o'clock, P.M., December 5, A.D. 1854.

S. A. CLARK,
Recorder.

Recorded by F. LEWIS,
Deputy.

County Recorder's Office, County of Santa Clara, State of California.

I hereby certify, that the above and foregoing pages, numbered 1, 2, 3, and 4, contain a full, true, and correct copy of an instrument of writing (deed from Antonio Chaboya to Robert Haley, of part of the rancho "Yerba Buena"), now on record in book "G." of deeds, on pages 430, 431, and 432, in this office.

Witness my hand and official seal hereto affixed, this the 19th day of December, A.D. 1854.

S. A. CLARK,
Recorder.

By F. LEWIS,
Deputy.

Filed in office, January 16, 1854.

GEO. FISHER,
Secretary.

Opinion.

For the place called "Yerba Buena," ó Socayre, in Santa Clara County.

ANTONIO CHABOYA
v.
THE UNITED STATES. } 93.

The proof shows that the claimant has lived upon, cultivated, and

improved the premises claimed during more than twenty years. In 1833 he applied to Gov. Figueroa, and obtained a decree giving him the right to build a house, cultivate the land, and continue the pasturage of his stock, under certain limitations and restrictions. In February, 1840, he applied to Gov. Alvarado for a grant of the place in full property, and the following document was issued and delivered to him.

"MONTEREY, February 24, 1840.

"The present solicitude being seen, and the documents accompanying it, with the informes practiced, and all the rest which was presented, I grant in property to the citizen 'Antonio Chaboya' the place called 'Yerba Buena,' situated in the jurisdiction of the pueblo of San Jose Guadalupe, to the extent of six leagues (sitios de ganado mayor), a little more or less, of which he has already taken possession, according to the limits which he expresses in his application.

"JUAN B. ALVARADO."

This document and the original papers accompanying it, and produced by the claimant with proof of their genuineness, are given in evidence. They are sufficient to establish the petitioner's equitable right to the premises. The land granted is defined with sufficient certainty in the title papers, and is represented on the map attached to them. The quantity included in the boundaries, although stated in the grant at six leagues, it seems from the testimony is only about three. The claim is meritorious and will be confirmed.

Confirmed, ———

Filed in office, October 17, 1854.

GEO. FISHER,
Secretary.

Decree.

ANTONIO CHABOYA
v.
THE UNITED STATES. } 93.

In this case, on hearing the proofs and allegations, it is adjudged by the commissioner, that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is hereby made is that on which said Chaboya resides, known by the name of Yerba Buena ó Socayre, situated in Santa Clara county, and bounded and described as follows, to wit: Bounded on the south by the Portezuelo de las Animas; on the north by the land of Ml. Joaquin Higuera and the dry lagoon of the pueblo of San Jose Guadalupe; on the east by the top (cuchilla) of the adjoining hills, and on the west by the rancho of the Bernales and the punta del Roblar in the vicinity of the Coyote creek, refer-

ence for more particular description to be had to the grant and the map thereto attached on file in this case.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office, October 17, 1854.

GEO. FISHER,
Secretary.

Order.

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the northern district of California, It is hereby ordered, that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary; one of which transcripts shall be filed with the clerk of the United States District Court for the Northern Judicial District of California, and the other transmitted to the attorney-general of the United States.

Secretary's Certificate.

Office of the Board of Commissioners to ascertain and settle the private land claims in the State of California.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims of the State of California, do hereby certify the foregoing forty-eight pages, numbered from 1 to 48, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of said board, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office in case No. 93 on the docket of the said board, wherein Antonio Chaboya is the claimant against the United States for the place known by the name of "Yerba Buena ó Socayre."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office), at San Francisco, California, this twenty-fifth day of May, A.D. 1855, and of the independence of the United States of America the seventy-ninth.

[SEAL.]

GEO. FISHER,
Secretary.

Filed, June 2, 1855.

JNO. A. MONROE,
Clerk.

Notice of Appeal.

Office of the Attorney-General of the United States.

WASHINGTON, June 13, 1855.

93. Yerba Buena ó Socayre.

Antonio Chaboya, claimant, you will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 9th day of April, 1855, the appeal in the District Court of the United States for the Northern District of California will be prosecuted by the United States.

Very respectfully,
C. CUSHING,
Attorney-General.

Indorsed: Filed, July 17th, 1855. John A. Monroe, clerk, by W. H. Chevers, deputy.

Petition.

THE UNITED STATES, appellants,
v.
ANTONIO CHABOYA.

To the Honorable the District Court of the United States in and for the Northern District of California.

The petition of the United States, by their attorney, represents, that this cause is an application for a review of the decision of the board of commissioners whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said record was filed in this court on the 1st day of May, 1855; that a notice of appeal was filed on the 1st day of May, 1855; and that the land claimed lies in the said district; that the said claim is invalid. Wherefore appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid.

Respectfully, &c.,
S. W. INGE,
U. S. Dist. Att'y.

Indorsed: Filed, November 30th, 1855. John A. Monroe, clerk, by W. H. Chevers, deputy.

Answer.

District Court of the United States, Northern District of California.

THE UNITED STATES
v.
ANTONIO CHABOYA, appellee and claimant.

Antonio Chaboya, appellee and claimant in the above entitled cause, in answer to the petition therein filed, avers and says, that his title to the land therein claimed is valid.

He therefore prays that the decision of the board of land commissioners be affirmed, and the title of the said claimant be decreed valid.

J. B. HART,
Att'y for Claimant.

Indorsed: Filed, November 30th, 1855. John A. Monroe, clerk, by W. H. Chevers, deputy.

Deposition of Antonio Chabolla.

United States District Court, Northern District of California.

SAN FRANCISCO, January 12th, 1856.

On this day, before George Pen Johnston, a commissioner of the United States for the Districts of California, duly authorized to administer oaths, &c. &c., came Antonio Chabolla, a witness produced on behalf of the United States in case No. 213, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 93 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Robert Simpson, Esq., a sworn interpreter:

UNITED STATES OF AMERICA
v.
ANTONIO CHABOLLA.

Case No. 213 District Court, and Case No. 93 Land Commission.
Appeal.

Present, A. Glassell, acting United States attorney, in behalf of the United States.

The claimant himself being present, and there being no attorney of record in his behalf.

Question by United States Attorney. What is your name, age, and place of residence?

My name is Antonio Chabolla. I don't know my age; and I live at the pueblo of San Jose.

Do you know in what year you were born?

I do not know. I think I am an old man. I have a daughter married who has one child.

Are you the claimant of a rancho in Santa Clara county?

I do own land in that county.

To whom did you deliver the documents relating to the rancho where you live?

I delivered some of them to Carey Jones, who was my lawyer, and some of them to Mr. Jones' partner, at Mr. J.'s request.

Did you ever have any other papers relating to that land other than you delivered to Mr. Jones, and those delivered to his partner, at Mr. J.'s request?

I never had any other.

What is the name of the rancho in which you live?

It is called Yerba Buena ó Socayre.

Is there any other person of your name who now does or ever did live on that rancho?

The only other person who ever lived there of my name is a little boy, a nephew of mine, named Jose Antonio Chabolla.

Was there ever any other person of your name who ever claimed a concession of the rancho on which you live?

There never was.

his
ANTONIO ⋈ CHABOLLA.
mark

Sworn to and subscribed before me, this 12th day of January, A.D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Indorsed: Filed January 14th, 1856. John A. Monroe, clerk, by W. H. Chevers, deputy.

Deposition of Antonio Chabolla.

United States District Court, Northern District of California.

THE UNITED STATES
v.
ANTONIO CHABOYA.

Case No. 213, District Court. Case No. 93, Land Commission.

SAN FRANCISCO, January 27th, A.D. 1856.

On this day, before me, Geo. Pen Johnston, a commissioner of the United States for the districts of California, duly authorized to ad-

minister oaths, &c. &c., came Antonio Chabolla, a witness produced on behalf of claimant in case No. 213, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 93 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by W. H. Davis, Esq., a sworn interpreter.

Present, the United States district attorney, on behalf of the United States, appellants, and J. B. Hart, Esq., and Saunders and Hepburn, on behalf of claimant and appellees.

Questions by attorneys for claimants and appellees.

What is your name, age, and place of residence?

My name is Antonio Chabolla, my age is fifty-three years, and my place of residence is the county of Santa Clara.

How many titles have you to your ranch?

I have two.

What have you done with them?

One of the titles I gave to Mr. Carey Jones, the other I gave to H. P. Jones and Horace Hawes.

Which title did you give to William Carey Jones?

The one I got from Figueroa.

(Here a receipt, purporting to be signed by H. P. Jones, witnessed by Horace Hawes, written in Spanish and English, is offered by claimant's attorneys, to be attached to this deposition, and it not being objected to, is accordingly attached, marked "Exhibit 'A.,' G. P. J.")

What title did you give to Jones and Hawes, for which you have produced the receipt above described?

The title from J. B. Alvarado is the one I gave to H. P. Jones, for which he gave me the receipt.

(As to the interest of the witness in this cause, and to the sufficiency of the notice for the taking of this deposition, also to the fact of the witness being the party claimant, the United States district attorney waives all objections.)

his
ANTONIO ⋈ CHABOLLA.
mark

Sworn to and subscribed before me, this 27th day of February, A.D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Exhibit "A.," G. P. J.

Dn. Antonio Chevoya hapuesta in mis marios un documento en idioma Espanol, titulado espediente promovido per Antonio Chevoya,

en pretencion del paraje nombrado "Yerba Buena," en la demarcacion del pueblo de San Jose Guadalupe, ano de 1840.

H. P. JONES.

SAN FRANCISCO, 9bre, 4 de 1853.

Witness:

HORACE HAWES.

Received of Antonio Chevoya the document entitled as in the preceding, and I am responsible for its safe keeping. Nov. 4, 1853.

H. P. JONES.

Witness:

HORACE HAWES.

Indorsed: Filed August 20th, 1856. John A. Monroe, clerk, by W. H. Chevers, deputy.

Deposition of S. O. Houghton.

United States District Court, Northern District of California.

SAN FRANCISCO, Nov. 12th, 1856.

On this day, before Geo. Pen Johnston, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c. &c., came S. O. Houghton, a witness produced on behalf of the United States, in case No. 213, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 93 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, the United States district attorney, on behalf of the United States; J. B. Hart, Esq., on behalf of the claimant.

Direct examination. Questions by the U. S. District Attorney.

Question 1. What is your name, age, and place of residence?

Answer 1. My name is S. O. Houghton; I am twenty-seven years of age, and I reside at the city of San Jose, California.

Question 2. Do you know Antonio Chaboya, the claimant in this case?

Answer 2. I know him personally.

Question 3. Do you know the land on which Antonio Chaboya lives?

Answer 3. I do.

Question 4. Is the land on which he lives the same land claimed in this case?

Answer 4. I believe it is; the ranch on which he lives is called "Yerba Buena."

Question 5. Did you ever have any conversation with Antonio Chaboya concerning his title to that land?

Answer 5. Yes; my impression is that in was in 1851, just after the establishment of the board of land commissioners. I was conversing with him and another Californian about their titles to their ranches. I had been looking over the title of Jose Maria Alviso, at Alviso's house; Chavoya was present. I had explained to them the object of the creation of the board of land commission. Considerable conversation occurred between them about their titles. Chaboya then told me what kind of title he had.

(Objection by claimant's attorney as to any question about the character of the claimant's title.)

He called it a prestanio title. I did not understand what that was, and I asked him to explain it to me. He and Alviso together did explain it to me. The explanation they gave of it was, that it was a title given by the authorities of the pueblo of San Jose, granting Chavoya permission to occupy the land. Chavoya, in the course of the conversation, asked deponent what he thought it. I asked him if the prestanio was all the title he had, and he said it was. He did not show me the title at the time we were talking of the prestanio or titles.

Question 6. Did he show you the prestanio or titles at any time afterwards?

(The attorney for the claimant here objects to this interrogatory.)

Answer 6. He did show me afterwards that which he called the prestanio title. I think he showed it to me the next year, 1852, but it might have been later. I am not positive about the time.

Question 7. Would you know the paper if you were to see it?

Answer 7. I think that I should know it.

(A paper is here shown the witness, on page 23 of the transcript from the board of commissioners in this case, purporting to be a translation of the original title, and the witness is asked:)

Question 8. Is the paper now shown you a correct translation, and of the same tenor, as the paper shown you by Antonio Chaboya?

Answer 8. The paper is of the same tenor as the one shown me by Antonio Cheboya; but I cannot tell anything about the correctness of the translation, without comparing it with the original.

Question 9. Was the paper Chavoya showed you a grant of land, or permission to occupy land?

(Objected by claimant's attorneys.)

Answer 9. It was a permission to occupy land, called Yerba Buena.

Question 10. Do you understand Spanish?

Answer 10. I do.

Question 11. At this time did Chavoya say he had any other title or not?

Answer 11. He said he had no other title than the one he showed me.

Question 12. Do you whether, at this time, he had presented his claim to the land commission?

Answer 12. He told me he had not then presented his claim to the board. This conversation took place in the street, at San Jose; at Chavoya's request he went with him to the office of Wallace and Ryland, attorneys, at San Jose, to make terms with them to present his claims to the board, and deponent then translated this paper now spoken of, to Wallace and Ryland. Chavoya was asked by Wallace and Ryland, through deponent, as interpreter, whether this was all the title he had, and he said it was.

Cross-examined by claimant's attorney.

Question 13. When did you first know Chavoya?

Answer 13. It was either in the latter part of 1849 or first part of 1850.

Question 14. What were his circumstances at that time?

Answer 14. He was living on this place, at that time grazing cattle; the horses seemed to have been there some time.

Question 15. Do you know whether Chavoya can read and write, either in Spanish or English?

Answer 15. I do not.

Question 16. Is Chavoya an ignorant man?

Answer 16. He is.

Question 17. At whose instance are you now being examined?

Answer 17. Since I have been in attendance on the Circuit Court, Frederick Hall, of San Jose, told me that he wanted my testimony in this case, and I am now testifying at his instance and at that of the district attorney. Mr. Hall is an attorney at law at San Jose; several months ago I told Mr. Hall of my conversation with Antonio Chavoya. I think Mr. Hall is employed by the squatters to contest the title of the claimant in this case. I have no interest whatever in the result of this litigation. I learned the Spanish language at first from books, and perfected my knowledge of it in this country.

S. O. HOUGHTON.

Sworn to and subscribed before me this 12th day of November, A. D. 1856.

GEO. PEN JOHNSON,
U. S. Commissioner.

Indorsed: Filed Nov. 17, 1856. John A. Monroe, clerk. By W. H. Chevers, deputy.

Affidavit of Jesse B. Hart, and notice of motion.

UNITED STATES
v.
ANTONIO CHABOYA. } No. 213.

Claim for Yerba Buena y Socayre, District Court of the United States for the Northern District of California.

Personally appeared Jesse B. Hart, who made oath that he is the attorney of record for the claimant in the above entitled cause. That it is now about nine months since the said cause was regularly called in its order on the docket. That at the time the same was reached and called the claimant was ready and offered to argue and submit the same. That the district attorney of the United States said he was not ready, and gave a reason that he wished to take further testimony in the cause. That the said claim is a most meritorious one; that claimant is an old man, that he has been in possession of the land claimed since the year 1824, and still is in actual possession of a small portion of it about his house; that a large portion of it has been and is in possession of squatters; that the claimant and those claiming under him are obliged to pay the taxes on the said land, and that the products of the same, which are enormous, are all enjoyed by the squatters. That the said claim has been confirmed by the land commission; that after the said confirmation the cause was sought to be reopened before the commission on the application of the law agent of the government, under the pretence of fraud. That the allegations of the affidavits, which were the foundation of said application, were never sustained by any proof whatever, tending to prove the same, and that thereafter said application was denied. That the district attorney declined to submit the said cause in this court when it was called. That although nine months have elapsed since the date of the calling of the said cause, no proof whatever in any tending to prove the said allegations has been adduced by the government. That the charge of fraud was made to continue said cause in court, indefinitely, as I believe, and made at the instance and for the benefit of the squatters, to enable them to keep possession of the land and enjoy the same, in violation of justice and common honesty, and to the irreparable injury and ruin of the claimants.

J. B. HART.

Subscribed and sworn to before me this 9th day of February, A. D. 1857.

F. L. THIBAULT, [SEAL.]
Notary Public.

UNITED STATES
v.
ANTONIO CHABOYA. } No. 213.

In the District Court of the United States for the Northern District.

William Blanding, Esq.

Sir: Take notice that on Monday morning, the 16th instant, at the opening of the court or as soon thereafter as counsel can be heard, the claimant and appellee in the above cause will move the court to close the proofs in said cause, unless the government shall show cause against the same. Said application will be made on the accompanying affidavit and papers in the cause.

SAUNDERS & HEPBURN,
For Claimant.

Indorsed: Service accepted Feb. 10th, 1857. William Blanding, district attorney. Filed Feb. 6th, 1857. John A. Monroe, clerk. By W. H. Chevers, deputy.

Order allowing 14 *days time to close Testimony.*

UNITED STATES
v.
ANTONIO CHABOYA. } No. 213.

In the District Court of the United States for the Northern District of California.

On reading and filing the affidavit of J. B. Hart, ordered by the court, that the United States, who is the appellant in the above cause, have fourteen days from this date in which to offer further testimony, on which day it is hereby ordered that the proofs on both sides shall be closed.

February 16th, 1857.

Indorsed: Filed February 16th, 1857, John A. Monroe, clerk, by W. H. Chevers, deputy.

Affidavit of F. Hall and Order extending Time.

United States District Court, Northern District, State of California.

UNITED STATES, appellants,
v.
ANTONIO CHABOLLA. } No. 213.

Frederick Hall being duly sworn says, that he verily believes from conversations with the above-mentioned Chabolla and other persons, that the grant filed in the above entitled cause is a fraudu-

lent one, that evidence can be obtained in the course of a few weeks sufficient to show that said grant was made since the year A.D. 1850, that this affiant is now endeavoring to find certain persons by whom he has reason to believe he will be able to defeat said grant, and whom it will require several weeks to produce here. And further, that one Hastings, attorney and counsellor at law, stated to the affiant that he, said Hastings, filed before the board of land commissioners the grant aforesaid, and that since that time he, the said Hastings, stated to this affiant that from information received by him since the filing thereof as aforesaid, he believes said grant to be a fraudulent one. Also one Horace Hawes, attorney and counsellor at law, stated to this affiant that he, said Hawes, argued said case before said commissioners, for and in behalf of said Chabolla, and that from information received by him since the argument thereof, that he had reasons to believe that said grant was a fraudulent one. And further, this affiant declares that this affidavit is not made for the purpose of delay, but in order that justice may be done in the premises.

FREDERIC HALL.

Sworn to and subscribed before me this February 28th, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

On reading and filing the foregoing affidavit and on motion of the district attorney, ordered that three weeks further time be allowed both parties to close proofs and submit cause.

March 2d, 1857.

Indorsed: Filed March 2d, 1857, John A. Monroe, clerk, by W. H. Chevers, deputy.

Deposition of Julian Hawks.

United States District Court, Northern District of California.

San Francisco, February 28th, 1857.

On this day before Cutler McAllister, a commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Julian Hawks, a witness produced on behalf of the United States in case No. 213, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 93 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: Mr. Hart for claimant and the United States district attorney.

Questions by the United States District Attorney.

Question 1. State your name, age, place of residence, and occupation.

Answer 1. My name is Julian Hawks. I am forty-nine. I reside in San Jose. I am at present a miller.

Question 2. Are you acquainted with one Antonio Chaboya?

Answer 2. I am.

Question 3. Where does he reside?

Answer 3. He resides in San Jose; that is about eight miles from the town of San Jose, in the county of Santa Clara.

Question 4. Do you or not know any other person of the same name residing in Santa Clara county?

Answer 4. I do not.

Question 5. Did you or not ever have any conversation with Antonio Chaboya in relation to land claimed by him in the county of Santa Clara? if so, state when, where, and what that conversation was.

(Objected to by attorney for claimant on the ground of incompetency.)

Answer 5. I had a conversation with Antonio Chaboya once with regard to land he claimed in Santa Clara county; it took place in the fall of the year 1852; this conversation occurred in the town of San Jose. He proposed to sell me a piece of land in a place he claimed as his farm, called Yerba Buena, of a thousand varas square. I told him I would purchase provided he would show me his papers, and they were satisfactory. He said very well, if I would go over to his house he would show me the papers. I went over, he showed me the papers, and told me they were all he had; he also pointed out to me the boundaries of the place he claimed. After he showed me the boundaries I left.

Question 6. Did he or not state and designate to you what the boundaries to the land he then claimed were?

(Objected to by attorney for claimant.)

Answer 6. He did, he stood at his house and pointed out the boundaries.

Question 7. State what the boundaries were that he then pointed out to you?

(Objected to by attorney for claimant.)

Answer 7. He pointed out an arroyo at the back of the house up in the hills in a northeasterly direction from his house, which he called arroyo del Alamo. He pointed out on the southwest side from his house an old adobe building, as near as I can recollect about a mile distant from his house. He pointed with his hand round the ridge on the southeast side from his house and called it Rincon Yader (or poison oak), and pointing round the ridge he came back to the head of this arroyo del Alamo. He said there was

about two leagues of it more or less. That was all he said in relation to boundaries at that time that I recollect.

Question 8. From your best judgment, how much land do you think there was within the boundaries designated?

(Objected to by attorney for claimants.)

Answer 8. About two leagues, I should think, less, if anything.

Question 9. At the time you had a conversation with Antonio Chaboya relative to purchasing from him as before stated, what did you state to him at that time relative to the title and his reply to you?

(Objected to by attorney for claimant.)

Answer 9. I went up there, and had no further conversation relative to the papers until afterwards.

Question 10. What conversation did you afterwards have with him in relation to the title?

(Objection to by attorney for claimant.)

Answer 10. I told him I could not think of purchasing if he had no other title than what he showed me; it was not satisfactory. I had a great many conversations with the old gentleman. He stated to me at one time that Salvio Pacheco was an enemy of his, and he always prevented him from getting a grant.

Question 11. Did he or not show you a paper calling it his title, and saying at the same time it was the only title he ever had; and the reason that he could not get a grant was because Salvio Pacheco was his enemy?

(Objected to by attorney for claimant as being leading and inadmissible.)

Answer 11. I think I have already answered this question. He did show me papers saying it was all he ever had, and he told me that he could not get a grant because Pacheco was his enemy. I do not recollect whether he told me this at the time he showed me the papers or not.

Question 12. Do you or not recollect whether the papers you saw called for a particular quantity of land or not?

(Objected to by attorney for claimant because it is leading, and in regard to the contents of a paper which is not produced here, of producing which no notice has been given.)

Answer 12. It did not.

Question 13. State how long you have resided in Santa Clara county?

Answer 13. Since 1845.

Question 14. How long have you been acquainted with Antonio Chaboya?

Answer 14. Since 1845.

Question 15. Do you recollect any signature to the paper Antonio Chaboya showed you? describe if you can the paper.

(Objected to by attorney for claimant, because the papers are not

produced here, nor notice given to have them produced, and the question is touching the contents of a written document.)

Answer 15. I don't recollect the signature; it had one. It was a sheet of common Mexican paper with a Mexican stamp on it. One-half of the page had writing on it; that is all I recollect about that paper.

Question 16. State if you, before 1852, at any time heard him claim any greater tract of land than what is designated to you.

(Objected to by attorney for claimant.)

Answer 16. I never did.

Question 17. State whether you have been intimate or not with Antonio Chaboya?

Answer 17. I have.

Question 18. State whether or not you have any interest at all in the land claimed by Antonio Chaboya?

Answer 18. I have not.

Question 19. State whether you have not always, and are not now, friendly to Antonio Chaboya?

Answer 19. I always have been friendly to him, and am so now.

Cross-examination.

Questions by J. B. Hart for claimant.

Question 1. When Chaboya exhibited to you his title at his house, did he show you a document signed by Jose Figueroa, dated Monterey, November 25th, 1833, a copy of which is contained in the record, page 15, now before you?

Answer 1. He did not.

Question 2. Is not Antonio Chaboya a simple, illiterate man?

Answer 2. He is illiterate enough; he is rather inclined to be simple.

Question 3. Who called upon you first to inquire whether you knew anything of Chaboya's titles?

Answer 3. I don't recollect.

Question 4. To whom did you first communicate the intelligence that you have detailed in this deposition?

Answer 4. I don't recollect.

Question 5. When did Mr. Hall request you to visit San Francisco to give your deposition; if you are here at his request?

Answer 5. It is not long since; I think it was day before yesterday.

Question 6. For whom does Mr. Hall act in this controversy?

Answer 6. I don't know anything about it.

JULIAN HAWKS.

Sworn to and subscribed before me, this 28th February, A.D. 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Indorsed: Filed March 17th, 1857. John A. Monroe, clerk, by W. H. Chevers, deputy.

Opinion delivered by Hon. M. H. McAllister confirming Claim.

UNITED STATES
v.
ANTONIO CHABOYA.

In the year 1852, the claimant presented his petition to the board of land commissioners, praying for a confirmation of his claim to a tract of land, with the boundaries shown in a map annexed, known the name of Yerba Buena y Socayre. The petitioner states that he had gone into possession of the premises by permission of the authorities of the municipality of San Jose de Guadalupe, to the commons of which town it was supposed to belong, and that on the 25th of November, 1833, his right was recognized, and a decree to serve him for title thereto given to him by Governor Figueroa, and that petitioner has ever since lived on and occupied said land undisturbed. The petition further states that the before-mentioned papers, and on which his title, as far as documentary evidence is concerned, existed in the archives of the former government of California, and concludes with stating that reliance is placed on said documentary evidence, and on such other testimony as he may obtain. This petition was filed on March 9, 1852. There is no amended petition before the commissioners, referring to the existence of any other documentary title. During the pendency of these proceedings, another document, bearing date February, 1840, was filed among the papers in the case before the board of commissioners, on the 10th December, 1853. The board in their decision, acted not only upon the decree of the 25th of November, 1833, but the alleged grant of 24th February, 1840, a copy of which is inserted in their opinion.

The only witness who swears to the genuineness of this latter document is Juan B. Alvarado. This witness deposes that he is acquainted with the signatures attached to Exhibit A. F., including the grant dated 24th February, 1840, and swears the signatures of the persons annexed thereto to be genuine. Alvarado even swears that he signed his own name, as governor, in the places where they appear on said paper, at their respectives dates. In view of the fact that in the petition presented to the commission no allusion whatever is made to the existence of such a document, that there was no evidence of its existence in the Mexican archives, that it never saw the light, so far as existence shows, until 1853, when it was produced before the commissioners; considering these facts, it is passing strange that but a solitary witness should be produced to establish so important a fact, and one so easy of proof as the genuineness of this alleged grant.

Another circumstance is suggested with a view to influence suspi-

cion against the genuineness of the grant. That circumstance is, that it was on paper *habilitated* with *printed*, and not with written headings. On examination of the records, it is found that in January and February, 1840, the stamped paper *habilitated* by written headings was for the years 1839 and 1840. This seems to have continued until April, when, with the exception of this grant, the first grant was habilitated with printed letters. The foregoing is the testimony which was before the board of commissioners, and they, in view of all the circumstances, relied on the statement of Alvarado, unimpeached as that witness was, in a direct manner, and decided in favor of the genuineness of the grant. Since the appeal taken to this court, additional testimony has been taken to disaffirm the genuineness of the grant.

Julian Hawks swears to a conversation he had with claimant in the fall of 1852, when a proposition to sell was made to witness; that on that occasion claimant pointed out the boundaries of the land and exhibited all his title papers, and said that Salvio Pacheco was his enemy, and had prevented him from getting a grant. Witness declined to purchase because there was no grant exhibited.

S. O. Houghton testifies to a conversation with claimant in 1851, just after the establishment of the board of land commissioners. In that conversation the witness states that claimant spoke of his title as a prestano title, and explained its character. Witness states he afterwards saw this *prestano* title, and that claimant told witness it was all the title he had.

If the testimony of these witnesses, together with the other facts in this case confirmatory thereof, are to be believed, the testimony of Alvarado as to the date of his signature, is not to be relied on, or if true, it leaves behind the conviction that the suggestion made by the government, that this grant was not delivered until perhaps after this country was in possession of the American forces, is correct.

But it is deemed unnecessary to decide upon the genuineness of this grant, as we consider that this claim may be sustained upon the document of 25th November, 1833, the fulfilment by claimant of the policy of the colonization laws of Mexico, his long possession, notorious occupation, and its recognition by the Mexican authorities for a series of years. Should it be conceded that the evidence establishes that the grant of 1840 was simulated, we know no law which would forfeit the interest of claimant in land previously acquired.

In executing instruments where a fraudulent alteration has been made by the grantee, such act avoids the instrument, and no right of action on it can be maintained. Such is not the rule with instruments which transfer an interest in real estate, even where the fraudulent alteration is found in the instrument itself. So much of the interest as it was intended to transfer fraudulently is void, because the balance is available. Even then, if it be conceded that there was an attempt to obtain a fraudulent grant several years after the decree

of 1833, such attempt would not forfeit pre-existing rights. If, therefore, these rights existed such extent as to authorize the confirmation of this claim, a decision upon the genuineness of the grant of 1840 is unnecessary.

The genuineness of the document to which we have now to look, that of 25th November, 1833, we do not consider to be doubted, but its effect to transfer anything but a mere permission occupancy is denied. That document gave the party a possession unlimited as to time, a right to stock, cultivate, and build on the land, and the only reservation is that the concession should not prejudice the pasturage rights of the common, and if the word concession used in the original is correctly translated "grant," then the document is so characterized on its face as to indicate an intention to convey an interest in the land. The claimant who had been previously in possession, remained in occupancy of the land, cultivated, stocked it, and built upon it. That possession has been customary and notorious. Its boundaries are described by several witnesses. The board of commissioners in their opinion say: The proof shows that the claimant has lived upon and cultivated the land for more than twenty years. Certain it is, he did so for several years before the Americans came into the country. The Mexican government stood by and permitted claimant and his family expend the labor of years upon it.

Juan Soto, a witness, swears to the actual occupation of, and being on the land by claimant since 1821.

Juan B. Mesa, aged 32 years, swears to such occupancy since he was a small boy.

Jose Noriega has known the ranch for nineteen years. He states that when he first knew it, claimant with his family was living on it; he had horses and cattle on it, and was cultivating the land. The house he then had built and in which he was living, seemed to have been built several years. He had a family of twenty children, all of whom he believes were born on the rancho. This witness states he had acted officially as alcalde in 1839, and the said ranch had always been recognized as the property of claimant by the municipal authorities and vecinos. The inhabitants of the pueblo every month brought their stock down to a certain fence, and they were prohibited by the municipal authorities from entering on said rancho.

Antonio M. Pico has known the ranch since 1833. Claimant was living on the ranch with his family. Cultivated a separate portion of it for the support of his family. Had on it 3000 head of cattle, and 100 head of brood mares. He occupied the place as owner, and it was generally recognized as his. I, as one of the municipal authorities, so recognized it. Claimant had occupied it continuously since

witness first knew the ranch. The claimant had twenty children, ten of whom are living. Were born on the rancho.

We consider that this notorious occupation for years, the structure of a domicile, the cultivation of the land, the extensive stocking of the land, all acts done with the express consent of the Mexican government, and with their implied consent for a series of years, make the claim a meritorious one, and gave the claimant an equitable claim upon that government for a confirmation; we have therefore arrived at the conclusion that, independently of any legal title, the claim is entitled to a confirmation of his claimant on equitable grounds.

A decree will therefore be entered, affirming the decree of the board of land commissioners.

Indorsed: Filed January 21st, 1858. John A. Monroe, clerk. By W. H. Chevers, deputy.

Decree.

District Court of the United States, Northern District of California.

THE UNITED STATES, appellants,
v.
ANTONIO CHABOYA, appellee. } Decree No. 213.

Stated Term, January 21, 1858.

This cause coming on this day, to be heard on appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California, under the act of Congress, approved 3d March, 1851, upon the transcript of the proceedings and decision of the said board, and upon the further evidence taken in this court by order of the court, and counsel for the respective parties having appeared; in consideration of all which, the court is of opinion that there is no error in the decision of the said board of commissioners, and that the same should be and is hereby affirmed.

And the court doth order, adjudge, and decree, that the title of the said claimant to the land described in said transcript is valid, and the same is hereby confirmed to the extent and quantity of six square leagues.

The land of which confirmation is hereby made is that on which said Chaboya resides, known by the name of Yerba Buena, or Socayre, situated in Santa Clara county, and bounded and described as follows, to wit: Bounded on the south by the Portosuelo de las Animas; on the north by the land of Mr. Joaquin Higuera, and the dry lagoon of the pueblo of San Jose Guadalupe; on the east by the top (cuchilla) of the adjoining hills, and on the west by the rancho of the Bernales and the punta del Roblar in the vicinity of Coyote creek, containing six square leagues, provided said quantity of six

square leagues be contained within said boundaries; and if there be less than said quantity of six square leagues within said boundaries, then such less quantity is hereby confirmed to the said claimant.

Reference for more particular description to be had to the grant, and the map thereto attached, on file in this case.

M. HALL McALLISTER,
Judge Circuit Court.

Indorsed: Filed January 21, 1858. John A. Monroe, clerk. By W. H. Chevers, deputy.

Stipulation.

United States District Court, Northern District of California.

THE UNITED STATES
v.
ANTONIO CHABOYA. } D. C. 213. L. C. 93.

SAN FRANCISCO, Oct 5th, 1858.

In pursuance of notice received from the United States attorney-general, it is hereby stipulated and agreed, that no further appeal herein be taken on the part of the United States, and that claimant have leave to proceed under the decree heretofore entered in this court as under final decree.

P. DELLA TORRE,
U. S. Attorney.
J. B. HART,
Attorney for Claimant.
ANTONIO CHABOYA.

Indorsed: Filed October 8th, 1858. W. H. Chevers, clerk.

At a stated term of the District Court of the United States of America, for the Northern District of California, held at the court room in the city of San Francisco, on Friday the eighth day of October, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
ANTONIO CHABOYA. } D. C. 213. L. C. 93.

Order vacating Appeal.

In this case a stipulation having been entered into between the United States attorney and the attorney for the claimant, that no further appeal will be taken on the part of the United States; on motion of P. Della Torre, Esq., United States attorney, it is ordered

that claimant have leave to proceed under the decree of this court heretofore rendered in his favor, as under final decree.

OGDEN HOFFMAN,
U. S. District Judge.

Indorsed: Filed, October 8th, 1858. W. H. Chevers, clerk.

Clerk's Certificate.

I, W. H. Chevers, clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and hereunto annexed pages, numbered from 1 to 116, both inclusive, contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the pleadings, depositions, orders, opinion, and decree filed in this office in the case entitled,

THE UNITED STATES, appellants,
v.
ANTONIO CHABOYA, appellee.

In testimony whereof, I have hereto set my hand and affixed the seal of said court, this seventh day of February, A.D. one [SEAL.] thousand eight hundred and sixty, and of our independence the 84th.

W. H. CHEVERS,
Clerk.

The defendants then offered C. T. Ryland as a witness, and offered to prove by him, that in 1853 he was an attorney at law and resided at San Jose, and practised law in partnership with W. T. Wallace; that in that year the law firm of Wallace and Ryland was employed by Antonio Chaboya, the patentee named in the patent given in evidence, to prosecute before the board of United States land commissioners his claim to the lands embraced in said patent; that Wallace and Ryland entered into a written contract with said Chaboya for the prosecution of said claim; that the said contract was recorded in the office of the county recorder for Santa Clara county. That a few days after being so employed, witness came to San Francisco to examine the papers on file in said cause, which was then pending before said land commissioners; that on such examination he found no grant or decree on file, to the said Chaboya for said lands, except a decree from Governor Figueroa and a map or decino accompanying the same; and never heard of a grant from Governor Alvarado to Chaboya for said lands, until about the time the said cause was decided by the land commission. The claim for confirmation was filed by another law firm, before Wallace and Ryland were employed in it. He further testified that he has made a diligent search amongst the papers of Wallace and Ryland for the original

contract between them and Chaboya, and cannot find it; that properly it should be amongst their papers.

The defendants also offered W. T. Wallace as a witness, and offered to prove by him in substance the same facts offered to be proved by said Ryland.

The defendants then offered S. O. Houghton as a witness, and offered to prove by him, that he is acquainted with the patentee Antonio Chaboya, and has been so acquainted since the year 1849 or 1850. That in 1851 he had a conversation with said Chaboya in respect to his title to the lands embraced in the patent.

That the conversation occurred soon after the passage of the act of Congress of 1851 establishing the land commission in California, and the conversation related to that subject and to Chaboya's title. That in that conversation Chaboya said he had only what he called a "prestano" title, which he explained to mean not a grant for the land, but only a permission to occupy it; that about a year after this witness had another conversation with Chaboya on the same subject, in which Chaboya said he wished to employ Wallace and Ryland to prosecute his claim before the land commission.

That at Chaboya's request, witness went with him to see Wallace and Ryland; and that at their interview witness acted as interpreter between them; that Chaboya produced a paper which he said was the evidence of his title; that witness read this paper and translated it to Wallace and Ryland; that it purported to be a permission only to occupy a tract of land designated as "Yerba Buena or Socayre," but designated no quantity or boundaries; that Chaboya said this was the only title he had. That no contract was then concluded between Chaboya and Wallace and Ryland; that Chaboya was then particularly inquired of whether he had any other title than the paper referred to, and said he had not.

The defendants then offered P. O. Minor as a witness, and offered to prove by him, that he is acquainted with the patentee, Antonio Chaboya, and has known him since 1850 or 1851; that in 1852, witness had a conversation with him in respect to his claim to the tract of land known as Yerba Buena or Socayre; that in the conversation Chaboya said he claimed only one league. But the plaintiff objected to the aforesaid testimony of the said Ryland, Wallace, Houghton, and Minor, as incompetent and inadmissible, and the court sustained the objection and refused to allow said testimony to go to the jury, to which ruling the defendants excepted at the time.

The defendants then offered in evidence a paper purporting but not proved to be a copy of the written contract between said Chaboya and Wallace and Ryland referred to above, and which is in the words and figures following.

Antonio Chabolla to William F. Wallace, agree't: Memorandum of an agreement made on the 6th day of July, 1853, between Antonio Chabolla of the first part, and William C. Wilson, William T.

Wallace, and Caius T. Ryland, of the second part, all of the county of Santa Clara and State of California, witnesseth: That the said party of the first part hath this day *sold* unto the said party of the second part, and their heirs and assigns, forever, the one equal undivided one-third of a rancho situated in said county, lying in a southeasterly direction from the city of San Jose, and south of the rancho de la Pala, and called Yerba Buena, being the same which was granted to the party of the first part by Governor Figueroa, about the year 1832; and the said party of the first part undertakes and agrees, that he will on demand made, convey to the said party of the second part, and to their heirs and assigns, a good and sufficient title to the said land hereby sold, with proper covenants. The considerations of the foregoing sale is the sum of one dollar in hand paid to the said party of the first part, by the said party of the second part, the receipt whereof is hereby acknowledged, and the agreement made by the said William T. Wallace and C. T. Ryland, who are attorneys at law, that they will attend to the claim for the said land now pending, and presented in favor of the party of the first part, before the land commissioner of the United States, at the city of San Francisco.

ANTONIO + CHABOLLA.

Witness to the signature of
Antonio Chabolla, who
cannot write his name,
but signed by a mark.
T. H. SWAIN.

State of California, County of Santa Clara, *ss.*

On this 6th day of July, A.D. 1853, personally came before me, recorder in and for said county, Antonio Chabolla, to me personally known to be the person described in and who executed the foregoing instrument of writing, who acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Given under my hand and private seal (there being no
[L. S.] seal of office yet provided), this day and year last before written.

I. M. MURPHY,
County Recorder.

Filed for record at 9¼ o'clock, A.M., July 6, A.D. 1853.

I. M. MURPHY,
Recorder.
By S. O. HOUGHTON,
Deputy.
Recorded by F. LEWIS,
Deputy.

I hereby certify that the above and foregoing, on pages 1 and 2, is a full, true, and correct copy of an instrument of record in my office, on pages 252 and 253 of Book F., of deeds.

JNO. B. WILSON, [L. S.]
County Recorder, Santa Clara Co.

To which the plaintiff objected as incompetent evidence, and also on the ground that a proper foundation had not been laid for the introduction of the said copy in evidence; and the court sustained the objection, and excluded the said paper from the jury, to which ruling the defendants excepted at the time.

The defendants then offered in evidence the following document:

Antonio Chabolla.

Know all men by these presents, that I, the undersigned Antonio Chabolla, have taken up a piece or parcel of land for the purpose of pre-empting and improving and cultivating the same; said land is situated about six miles easterly from the city of San Jose, in Santa Clara county and State of California, described as follows, to wit: Commencing at a stake near a living spring, said stake bears S. 42° W. 66 links, from an oak tree marked A.; thence running S. 58° 20′ W. (true course), 47.75 chains, to a stake; thence S. 31° 40′ E. (true course), 33.50 chains, to a stake; thence N. 58° 20′ E. (true course), 47.75 chains, to a stake; thence N. 31° 40′ W. (true course), 33.50 chains, to the place of beginning; containing 160 acres, as surveyed on the 21st day of October, 1853, by L. B. Healy, Esq., deputy county surveyor of Santa Clara county.

1st. The land as marked and described, does not contain more than one hundred and sixty acres, and to the best of my knowledge and belief, the same is not claimed under any existing title.

2d. My intention is to comply with the requisition of the law, so as to enable me to hold a pre-emption on the same.

3d. I have taken up no other claim under the act of the legislature of California, approved April 20th, A.D. 1852, entitled "An Act prescribing the mode of maintaining and defending possessory actions on the public lands in this State."

his
ANTONIO + CHABOLLA.
mark

Witness:
S. O. HOUGHTON.

State of California, County of Santa Clara, *ss.*

On this 22d day of October, A.D. 1853, personally came before me, recorder in and for the county aforesaid, Antonio Chabolla, who having been by me duly sworn, through a competent and sworn in-

terpreter, declared that he executed the same freely and voluntarily, and for the uses and purposes therein expressed, and that the facts set forth therein are true to the best of his knowledge and belief.

Given under my hand and private seal (no official seal [SEAL.] having yet been provided), the day and year last above written.

S. A. CLARK,
County Recorder.

Filed for record at 10½ o'clock, A.M., October 22d, A.D. 1853.

S. A. CLARK,
County Recorder.

Recorded by F. LEWIS,
Deputy.

I hereby certify that the above and foregoing, on pages 1 and 2, is a true, full, and correct copy of an instrument of record in my office, on pages 10 and 11 of Book "C." of pre-emptions.

JNO. B. WILSON, [L. S.]
County Recorder, Santa Clara Co.

And the defendants at the same time offered to prove that the 160 acres described in said paper is a part of the lands in controversy in this suit, but the plaintiff objected to said paper as incompetent evidence, and the court sustained the objection, to which ruling the defendants excepted at the time.

The defendants then introduced Wm. R. Davis as a witness, who testified as follows, to wit: That, for nearly two years last past, he has been, and yet is the clerk of the mayor and common council of the city of San Jose, and as such has charge of the records and official papers of the said mayor and council; that on the 4th day of August, 1858, Peter O. Minor was president of the board of trustees and common council of said city; that he was elected as such on the third ballot in April, 1858, and went out of office on the 24th April, 1859.

That Thomas Fallon resigned his office as one of the board of fund commissioners of the city of San Jose, and S. O. Houghton was elected in his place. That on the 2d May, 1859, William Daniels resigned his office as one of said fund commissioners, and Lawrence Archer was elected in his stead. That the said fund commissioners gave bond and duly qualified as such. That on the 4th day of August, 1858, William Daniels, James C. Cobb, and S. O. Houghton were such fund commissioners, and gave bond and were duly qualified as such. That on the 11th day of December, 1859, and from thenceforth until the present time, James C. Cobb, S. O. Houghton, and Lawrence Archer were and yet are such fund commissioners, duly appointed and qualified.

The defendants then put in evidence a deed from the city of San

Jose, to the said Daniels, Cobb, and Houghton, as such funded commissioners, which deed is in the words and figures following:

This indenture, made and entered into this fourth day of August, A. D. 1858, by and between the city of San Jose, by Peter O. Minor, president of the board of trustees of said city on behalf of said city, party of the first part, and William Daniels, James C. Cobb, and S. O. Houghton, commissioners of the funded debt of the city of San Jose, and to their successors in office, parties of the second part, witnesseth: That whereas the said William Daniels, James C. Cobb, and S. O. Houghton, have duly qualified as commissioners of the funded debt of the city of San Jose in accordance with the requirements of an act of the legislature of the State of California, approved April 21st, 1858, entitled "An Act to authorize the funding of the unfunded debt of the city of San Jose and to provide for the payment of the same;" and whereas the board of trustees of the city of San Jose did, on the second day of August, 1858, by an ordinance passed by them and duly approved on the second day of August, 1858, authorize, impower, and direct P. O. Minor, president of said board of trustees, to make, execute, acknowledge, and deliver to the said commissioners a deed of conveyance, conveying to said commissioners all the property and rights, titles, and interest in property belonging to said city, together with lands and rights in lands or claims to the same, held or owned by the former pueblo de San Jose de Guadalupe, and all the pueblo rights of said pueblo in trust for the payment of the debts of said city. Now therefore, I, Peter O. Minor, president of the board of trustees of the city of San Jose on behalf of said city, by virtue of the authority conferred upon me by said ordinance, in consideration of the premises, have granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey unto William Daniels, James C. Cobb, and S. O. Houghton, commissioners of the funded debt of the city of San Jose, and to their successors in office, all those certain lands lying in the county of Santa Clara, State of California, to wit: all the property and rights, titles, and interest in property belonging to said city, together with the lands and rights in lands or claims to the same held or owned by the former pueblo de San Jose de Guadalupe, and all the pueblo rights of said pueblo. To have and to hold all and singular the said hereinbefore described and granted premises with the appurtenances unto the said William Daniels, James C. Cobb, and S. O. Houghton, commissioners as aforesaid, upon the trusts nevertheless, and to and for the uses, interests, and purposes hereinafter limited, described, and declared; that is to say, upon trust to sell and dispose of the same in such manner as they may deem the best interest of said city require, and to apply all moneys which shall be received by them from the sale of said lands to the payment of the funded debt of the city of San Jose after paying the necessary expenses of said board of commissioners.

In testimony whereof, I have hereunto set my hand and affixed the seal of said city of San Jose, this 4th day of August, A. D. 1858, above the last line of the second page [SEAL.] the word "before" erased and "after" interlined before signing, and the words "commissioners as aforesaid" on the second line above the last on second page interlined before signing.

PETER O. MINOR,
President of the Board of Trustees of the City of San Jose.

State of California, County of Santa Clara, *ss.*

On this twenty-third day of August, A. D. one thousand eight hundred and fifty-eight, before me, John B. Hewson, county clerk, in and for said county, personally appeared Peter O. Minor, as president of the board of trustees of the city of San Jose, to me personally known to be the individual described in, and who executed the annexed instrument as president aforesaid, and acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned, as president, &c.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year above written.

JNO. B. HEWSON,
County Clerk.

The defendants then proved, that on the 12th day of December, 1859, J. C. Cobb, S. O. Houghton, and Lawrence Archer, as fund commissioners as aforesaid, by deeds properly executed and delivered, conveyed to the defendants severally, except the defendants Andrews and McWelsh, all the right, title, and interest of the city of San Jose, so far as said fund commissioners could by law convey the same, in and to the lands of which the defendants (except the defendants Trume Andrews and Mickle McWelsh), in their respective answers, admit that they were severally in possession at the commencement of this suit, and also proved that said conveyances were duly approved by the mayor and common council of said city.

The defendants then put in evidence the following acts of the legislature of the State of California:

"*An Act to incorporate the City of San Jose,*" *passed March* 27, 1850.

The people of the State of California, represented in Senate and Assembly, do enact as follows:

Sec. 1st. All that tract of land lying between the following limits and bounds, that is to say, beginning on the centre line of Second street, at a point one mile and a half southeasterly from its intersection with the centre line of San Fernando street, thence running in a straight line parallel with San Fernando street to the eastern bank

of the Coyote creek; thence down said creek along its eastern bank to its intersection with a line drawn through the centre of Rosa street; thence along said line in a straight course to a point forty rods southwesterly from the west bank of river Guadalupe; thence in a straight line to a point in the centre line of San Fernando street, produced forty rods southwesterly from said west bank; thence in a straight line, to such a point, forty rods southwesterly from said west bank, that a line, drawn from it to the place of beginning, shall be parallel with San Fernando street; thence along said line to the place of beginning, shall henceforth be known as the "city of San Jose."

Sec. 2. For the government of said city, there shall be a mayor and common council, to consist of seven members, one of whom shall be elected president; the said mayor and councilmen shall be a body politic and corporate by the name and style of the "Mayor and Common Council of the City of San Jose;" and by that name they and their successors shall be known in law, have perpetual succession, sue and be sued in all courts, and in all actions whatsoever, may grant, purchase, hold, and receive property, real and personal, within said city, may lease, sell, and dispose of the same for the benefit of the city, may provide for the regulation and use of all commons belonging to the city, and may have a common seal, and alter the same at pleasure: Provided, that they shall not purchase or receive any estate other than lands or lots within the same, as shall be necessary for the erection thereon of public buildings, or for the laying out of streets or public grounds, or such lands without the city as may be required for burial-grounds.

Sec. 3d. There shall be elected in said city, at the times and in the manner hereinafter provided, a mayor, seven councilmen, a city marshal, a city attorney, assessor, and treasurer; but no person shall be eligible to any of said offices, or to any other office which may be established by ordinance; nor shall any person be entitled to vote for the same who shall not be a qualified elector according to the constitution and laws of the State, and who shall not have resided in said city for thirty days next preceding the election.

Sec. 4th. The members of the common council, under this act, shall assemble within five days after their election and choose a presiding officer from their number, and some suitable person as clerk. In case of the absence of the president, they may elect a president pro tempore, who shall have all the power, and perform all the duties of president. They shall, by ordinance, fix the time and place of holding their stated meetings, and may be convened by the mayor at any time. A majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the council may previously, by ordinance, have prescribed; they shall judge of the qualifications, elections, and

returns of their own members, and the other officers elected under this act, and determine contested elections; they may determine rules for their own proceedings, punish any member or other person for disorderly conduct in their presence, and with the concurrence of two-thirds of their number, expel any member, but not a second time for the same cause; they shall keep a journal of their proceedings, and at the desire of any member, shall call the yeas and nays to be taken and entered on any question, and their proceedings shall be public.

Sec. 5th. The said city council shall have power to make by-laws and ordinances not repugnant to the constitution and laws of the United States, or of this State, to prevent and remove nuisances; to provide for licensing, regulating, and restraining theatrical and other amusements within the city; to provide for licensing any or all business not prohibited by law; to fix the amount of license tax for the same, to be apportioned and classified according to the amount of capital invested; to regulate and establish markets; to introduce water into the limits of the city, for irrigation and other purposes; to establish a board of health; to cause the streets to be cleaned and repaired; to impose and appropriate fines, penalties, and forfeitures for breaches of their ordinances, and to provide for punishment of breaches of the city ordinances, provided that no fine shall be imposed of more than five hundred dollars, and no offender be imprisoned for a longer period than ten days; to levy and collect taxes; to lay out, extend, alter, or widen streets or alleys; to establish and regulate a police; to make appropriations for any object of city expenditure; to erect and maintain poorhouses and hospitals; to prevent the introduction and spreading of diseases; and to pass such other by-laws and ordinances for the regulation of the police of said city, as they shall deem necessary; which by-laws and ordinances shall be published in the manner to be prescribed by the aforesaid city council.

Sec. 6th. The city council shall have power to borrow money and pledge the faith of the city therefor, provided, the aggregate of the debts of the city shall never exceed its annual estimated revenue.

Sec. 7. The aggregate amount of taxes levied by said council shall not exceed the sum of one per cent. upon the value of all the taxable property within said city, during one year.

Sec. 8. All accounts and demands against said city shall be submitted to the decision of the common council, and no money shall be drawn from the city treasury unless upon the certificate of the president, pursuant to an ordinance of the common council, specifying the funds out of which the same shall be paid. Whenever any account or demand has been approved by the common council, the president shall specify in his certificate the ordinance authorizing him to issue the same.

Sec. 9. It shall be the duty of the common council to establish and fix the salaries of the mayor or other city officers, and also to fix a

tariff of fees for the officers entitled to such, designating the fees which shall be allowed for each particular item of services, and cause the same to be published in like manner with the ordinances passed by the same council.

Sec. 10. Every ordinance which shall have been passed by the common council shall, before it becomes effective, be presented to the mayor for his approbation. If he approves it, he shall sign it; if not, he shall return it, with his objections in writing, to the common council, who shall cause the same to be entered upon its journals, and shall proceed to reconsider the same; if after such reconsideration, two-thirds of all the members of the common council elect shall agree to pass the same, it shall become an ordinance. In all such cases, the vote shall be taken by yeas and nays, and the names of the members voting for and against the same shall be entered upon the journals of the common council. If any ordinance shall not be returned by the mayor within ten days (Sundays excepted), after it shall have been presented to him, the same shall become effective, as if the mayor had signed it.

Sec. 11. It shall be the duty of the mayor to communicate to the common council, at least once every four months, and oftener if he shall deem it expedient, a general statement of the situation and condition of the city in relation to its government, finances, and improvements; to recommend to the common council the adoption of all such measures connected with the public health, cleanliness, and ornament of the city, and the improvement of the government and finances, as he shall deem expedient; to be vigilant and active in causing the laws and ordinances of the city government to be duly executed and enforced; to exercise a constant supervision and control over the official conduct and acts of all subordinate officers; to receive and examine into all such complaints as may be preferred against any of them for violation or neglect of duty, and certify the same to the common council, who shall act upon the same; and if they find the complaint to be true, shall have power to declare the office of the person so complained against to be vacant, and the same shall be filled as is hereinafter mentioned.

Sec. 12. The mayor, as to the offences committed within the limits of the city, shall have the like jurisdiction as is or may be conferred upon justices of the peace, and shall have the same power as a justice of the peace to examine and commit persons brought before him, and charged with the commission of crimes within the limits of the city; to take recognizances to appear, and to keep the peace, and to issue all such writs and processes as a justice of the peace may lawfully do, subject to all the rules governing justices' courts of the peace.

Sec. 13. The mayor shall also have jurisdiction over all violations of city ordinances, and may, according to the provisions of such ordinances, hold to bail, fine, or commit to prison persons found guilty of any violation thereof.

Sec. 14. It shall be the duty of the city marshal, in addition to the duties prescribed to him by the common council, to execute and return all processes issued by the mayor, or directed to him by any legal authority, and to attend upon the mayor's court regularly; he may appoint one or more deputies, who shall possess the same power and authority as the marshal; he shall arrest all persons guilty of a breach of the peace, and of violation of the city ordinances, and bring them before the mayor for trial; and he shall possess superintending control over the city police; he shall also, until otherwise provided by ordinance, perform all the duties of collector of city taxes.

Sec. 15. It shall be the duty of the assessor, in addition to the duties that may be prescribed to him by the common council, to make out, within such time as the common council shall order, a correct list of all the property taxable by law within the limits of said city, with the valuation thereof; which list, certified by him, shall be returned to the common council. The mode of making out said list, and of ascertaining the value of property, and of collecting all taxes, shall be the same as that prescribed by law for assessing and collecting the State tax.

Sec. 16. It shall be the duty of the city attorney to attend to all suits, matters, and things, in which the city may be legally interested, to give his advice or opinion in writing, whenever required by the mayor or common council; and to do and perform all such things, touching his office, as by the common council may be required of him.

Sec. 17. It shall be the duty of the treasurer to receive all moneys that shall come to said city, either by taxation or otherwise; and to pay the same out on the certificate of the president of the common council, as prescribed in section eighth; and to do and perform all such other acts as shall be prescribed to him by the common council. He shall, on the first day of January, April, July, and October, of each year, make out and present to the mayor a full and complete statement of the receipts and expenditures of the preceding three months, which statement the mayor shall cause to be published in the manner prescribed by section fifth.

Sec. 18. The common council shall have the power to create the office of city collector, and such other offices as they may deem necessary, and to prescribe the duties of all city officers subject to the provisions of this act.

Sec. 19. All city officers, before entering upon the duties of their office shall take the oath of office. The marshal, attorney, assessor, and treasurer shall also give bonds with sureties to be approved by the mayor, payable to the mayor and common council of the city of San Jose, in such penalty as may be prescribed by ordinance, conditioned for the faithful performance of the duties of their office, and the like bond may be required of any officer, whose office may be created by ordinance. Should the bond of any city officer become insufficient,

he may be required to give additional bond, and upon his failure so to do, his office shall be deemed vacant.

Sec. 20. On the second Monday of April next, and on the second Monday of April each year thereafter, there shall be had in the city of San Jose an election, to fill the offices created by this charter. At the first election, the electors present shall appoint three persons to act as judges, who shall, with two clerks to be appointed by them, the said officers having been first sworn, conduct the election and declare the result. The persons who shall have received a plurality of votes for the several offices, shall be declared duly elected. The mayor and councilmen chosen at such election shall be qualified within three days thereafter, and shall enter upon the discharge of their duties; the other officers elected shall qualify within ten days after the day of election. The said officers shall hold office until the first Monday of January next, and until their successors are elected and qualified.

Sec. 21. All the officers mentioned in the second section of this act, and all others whose office may be created by ordinance, shall be elected on the second Monday in April of each year, and their term of office shall be for one year, or until their successors are chosen and qualified. In cases of a vacancy in any city office, an election shall be ordered to fill the same. It shall be the duty of the council to order all elections, and to designate the place of holding the same, to give at least ten days' notice thereof, and to appoint three persons to act as judges at each place of voting; said judges shall appoint two clerks, and shall conduct such elections according to the general regulations prescribed by law concerning elections. In case any of said judges fail to attend, the electors present may appoint others in their stead. The return of all elections shall be made to the common council, who shall declare the result thereof.

Sec. 22. If any person elected to any city office, shall remove from the city, absent himself therefrom for more than thirty days without leave from the council, or shall fail to be qualified within ten days after the day of election, his office shall be deemed vacant.

Sec. 23. The corporation created by this act, shall succeed to all the legal rights and claims of the pueblo of San Jose, and shall be subject to all the liabilities incurred and obligations created by the ayuntamiento of said pueblo, provided that said corporation shall not exercise municipal authority over any of said pueblo lands, not embraced in the boundaries as declared in the first section of this act, except to rent, lease, or sell.

An Act

To authorize the funding of the debt of the city of San Jose; and to provide for the payment of the same.

(Approved April 19th, 1856.)

The people of the State of California, represented in Senate and Assembly, do enact as follows:

Sec. 1. The city of San Jose is hereby authorized to fund its debt contracted prior to the first day of January, one thousand eight hundred and fifty-six, and to that end, the mayor, president of the common council, and treasurer of said city, shall constitute a board of commissioners, to be styled "The Commissioners of the Funded Debt of the City of San Jose," and shall have and exercise the powers and perform the duties hereinafter provided, and the clerk of common council shall be *ex-officio* secretary of said board.

Sec. 2. The said commissioners shall cause to be prepared and shall have power to issue, on behalf of said city, bonds to an amount not exceeding in all, the sum of forty thousand dollars, bearing interest at a rate not to exceed twelve per centum per annum of the denomination of five hundred dollars and one hundred dollars each respectively, with coupons for interest attached, which bonds shall be made payable at the treasurer's office in said city, on or before the first day of January, one thousand eight hundred and sixty-seven, and the interest on the same shall be made payable by the treasurer of said city at his office annually, on the first day of January, on presentation of the respective coupons therefor. Every bond so issued shall be signed by the mayor of said city, and by the secretary of said board, and be authenticated with the corporate seal of the city of San Jose, and shall purport that the city owes the holder thereof the sum named in the bond payable, and bearing interest as aforesaid. The coupons for interest shall also be signed by the mayor and the secretary of the board.

Sec. 3. The said board of commissioners shall cause the bonds issued by them to be sold in such manner as the common council shall by ordinance provide, but said bonds shall not be sold at a rate lower than ninety-five cents on the dollar, and the proceeds thereof they shall pay over to the city treasurer, who shall apply it to the payment and redemption of such evidences of indebtedness as were issued before the first day of January, one thousand eight hundred and fifty-six, and which shall have been decided by the board of commissioners as equitable indebtedness of said city.

Sec. 4. It shall be the duty of the secretary of said board to attend the meetings of the board, and to keep a minute of their proceedings. He shall also keep a register of the amount of blank bonds received, and of the amount of each bond issued, its number, and when payable. Said secretary shall be entitled to receive such compensation for his services as the common council shall deem reasonable.

Sec. 5. It shall be the duty of the common council of said city to cause to be levied annually a special tax on the real and personal property of said city, in addition to tax for current expenses, sufficient to redeem at least four thousand dollars of the principal of said bonds annually, and also sufficient to pay the interest accruing annually until said bonds are paid. No appropriation shall be made out of the yearly revenue arising from taxation of the real and per-

sonal property of said city until sufficient money shall have been set aside to pay the interest upon all the bonds outstanding. There shall also be set aside, from each yearly revenue derived from taxation upon the real and personal property of said city, the further sum, as above provided to be levied, of four thousand dollars, as a sinking fund, for the redemption of said bonds.

Sec. 6. The term of office of said board of commissioners shall expire on the second Monday of July, one thousand eight hundred and fifty-six, or at such time previous thereto as they shall have completed all the business submitted to them, when they shall turn over all their books, papers, and accounts, to the clerk of the common council.

Sec. 7. On the first day of January, one thousand eight hundred and fifty-seven, and annually thereafter, it shall be the duty of the city treasurer, from the moneys in his hands set aside and appropriated for that purpose, to pay the annual interest on the bonds outstanding, and also to redeem four thousand dollars of the principal of said bonds, by previously advertising for two weeks in some public newspaper published in the county of Santa Clara, for proposals for the redemption of said bonds. The treasurer shall open the sealed proposals at the time and place specified in the publication, in presence of the mayor of said city, and such persons as choose to be present, and shall accept only of such bids as shall cancel the greatest amount of said bonds, provided that no bonds shall be redeemed at a rate greater than one hundred cents for one dollar in bonds, unless otherwise directed by ordinances of the common council.

Sec. 8. The said commissioners shall, before entering upon the discharge of their duties, file with the clerk of the common council a joint and several bond in the penal sum of twenty thousand dollars, to be approved by the common council, and conditioned for the faithful performance of their duties. Each member of said board shall receive such compensation for his services as the common council shall deem reasonable, which shall not exceed one hundred dollars each.

Sec. 9. The mayor and common council of the city of San Jose shall have power to pass any ordinance necessary to carry into effect the provisions of this act.

An Act

To reincorporate the city of San Jose, approved March 27, 1857.

The people of the State of California, represented in Senate and Assembly, do enact as follows:

Sec. 1. All that tract of land now called the city of San Jose, situate in the county of Santa Clara, and lying within the following limits and bounds, that is to say: Beginning on the centre line of Second street, at a point one mile and a half southeasterly from its

intersection with the centre line of San Fernando street; thence running in a straight line parallel with San Fernando street to the eastern bank of Coyote creek; thence down said creek, along its eastern bank, to its intersection with a line drawn through the centre of Rosa street; thence along said line, in a straight course, to a point forty rods southwesterly from the west bank of the river Guadalupe; thence in a straight line to a point in the centre line of San Fernando street, produced forty rods southwesterly from said west bank; thence in a straight line to such a point forty rods southwesterly from said west bank, that a line drawn from it to the place of beginning shall be parallel with San Fernando street; thence along said line to the place of beginning shall henceforth be known as the city of San Jose.

Sec. 2. The government of said city shall be vested in five trustees, a clerk, assessor, collector, and treasurer. Said trustees shall form a body politic and corporate, by the name of the "board of trustees of the city of San Jose," and by that name have perpetual succession, sue and be sued in all courts and in all matters whatsoever; may have and use a common seal, and alter the same at pleasure.

Sec. 3. The aforesaid board of trustees, assessor, and collector of taxes, shall be elected by the qualified voters at an election as herein provided. At the first meeting of said board of trustees, or as soon thereafter as possible, they shall select from their own number a president of said board of trustees; also the board of trustees shall select a treasurer and clerk, but neither of whom shall be a member of said board; and to elect the said president, treasurer, and clerk, it shall require the votes of a majority of all the members of said board. All elections of said city shall be by ballot, and a plurality vote shall be sufficient to elect. The said board of trustees, assessor, and collector, shall be elected on the second Monday of April next, and their successors on the second Monday of April of each and every succeeding year, at a charter election to be held for that purpose, by the legal voters resident within the limits of said city, and shall hold their offices for one year, and until their successors are elected and qualified; and the clerk and treasurer of said city shall hold their offices for a like term, and until their successors are elected and qualified.

Sec. 4. For the first election held to fill the offices created by this act, the present common council of said city shall appoint one inspector and two judges of election, who, together with two clerks to be appointed by them, shall take the oath of office prescribed by law for inspectors and judges of State and county elections (said elections to be held at the City Hall or other place publicly designated by said city authorities), declare the polls to be open, and proceed to receive votes, and declare the result. The persons having a plurality of all votes cast shall be declared elected. At all subsequent elections the board of trustees shall designate the inspector, judges, and clerks of elections, and the compensation of said inspector, judges, and clerks, shall not exceed three dollars each, at any one election,

and the returns of all city elections shall be made out and signed by the inspector, judges, and clerks, and filed in the office of the city clerk. The polls for all city elections shall be opened at eight o'clock, A.M., and continue open until six o'clock, P.M., of the same day.

Sec. 5. In case any one of the officers of election, designated by the board of trustees as inspectors, judges, or clerks of election, shall fail to attend, those officers so designated who do attend, shall fill their places by appointing qualified voters to act instead of such absent officers.

Sec. 6. The board of trustees, any three of whom shall form a quorum to do business, shall, on the first Monday following their election, meet for the transaction of business, and shall thereafter, on the first Monday of each succeeding month, meet for like purposes.

Sec. 7. If at any time either or any of the officers created by the foregoing sections of this act, shall by sickness, absence, or otherwise, be unable to perform the duties of his office, for a longer period than three months at one time, his office shall be deemed vacant, and the board of trustees shall call a special election to fill each vacancy, by giving ten days' notice thereof.

Sec. 8. The board of trustees shall have power, and it is hereby made their duty, to pass such ordinances from time to time as shall be deemed proper and necessary, and not repugnant to the Constitution of the United States and this State, to make provision for paying or in any way liquidating the indebtedness of the city, in accordance with the provisions of this act, and such laws as are now in force, providing for the funding of the indebtedness of said city, to fix the amount of bond required of the officers created by this act, provided, that the bond of the treasurer, and the collector, shall not be less than the amount of moneys that may reasonably be presumed to be in their hands at any one time, to prevent and remove nuisances within the limits of said city, to license, regulate, and restrain theatrical and other amusements within the city, to license all and every kind of business not repugnant to law, to fix the rates of license tax on all such business; provided always, that the license tax upon all business, trade, employment, and occupation, which under the laws of this State, a license is lawful, the license tax imposed by the city authorities, shall not exceed the sum so fixed by the laws of this State, for State and county purposes, and for each other lawful business, trade, or occupation, or employment, and for which no license tax is imposed under the laws of this State. Said board of trustees shall have power to fix the license at such rate as they may deem advisable to the interest of the city, and in proportion to the amount of business transacted; to establish and regulate markets; to purchase, hold, and maintain fire engines and implements for the prevention and suppression of fires; to construct wells and cisterns, organize and maintain fire departments, and supply the city with water; to

establish a board of health, and prescribe sanitary regulations; to lay out, alter, widen, open, grade, improve, and cleanse the streets, alleys, and public places; to repair, occupy, and use any property belonging to said city; to impose and appropriate fines, penalties, and forfeitures of breaches of the ordinances passed from time to time by the said board of trustees; provided, that no ordinance shall fix the amount of fine for one offence above one hundred dollars, or the amount of imprisonment for one offence more than thirty days; to levy and collect taxes upon all the taxable property within said city, provided always, that no ordinance shall be passed by said board of trustees authorizing the levy of a higher rate of tax than one half of one per cent. on the valuation of the taxable property within said city, and provided, that such tax of one half of one per cent. shall not be authorized to be raised in said city for a longer period of time than it shall require said city to extinguish its present indebtedness.

Sec. 9. Every ordinance passed by the board of trustees, in order to possess legal force and virtue, shall receive a majority vote of the trustees present at such meeting, and the approval of the president of the board of trustees, or if he shall refuse to approve the same, to render such ordinance valid, it shall require the vote of all the remaining members of the board of trustees, provided, that all ordinances shall be submitted to the board of trustees, at least one week before the same shall be finally acted upon.

Sec. 10. All bills, accounts, or demands, that shall lawfully arise against the city under this act, in order to be entitled to payment, shall, after being verified by the oath of the claimant, be presented to, and allowed, by the board of trustees, and receive the signature of the president, and be countersigned by the clerk. All such bills, accounts, or demands, after being so allowed, shall on presentation to the treasurer, be paid, as hereinafter provided, out of any unappropriated funds of the treasury.

Sec. 11. The board of trustees shall have no power to create any debt upon the credit of said city, nor to make any expenditure for improvement in said city, except as provided for in this act, except to pay for such necessary improvements in said city as the funds in the treasury may be sufficient to meet, after paying the expenses of the government, and all other demands against said city, legally due.

Sec. 12. At each and every regular meeting of the board of trustees, said board shall inquire into the condition and sufficiency of the streets, bridges, or school-houses, and all other buildings and property belonging to said city; and if it shall appear to a majority of said board of trustees that the interests of the city demand an expenditure of more money than there is in the treasury not otherwise appropriated, for repairing or improving said streets, or erecting, repairing, or improving, school-houses, bridges, or other property and buildings belonging to said city, or to recover possession of any real estate

justly the property of said city, the board of trustees shall make a report of the same, to be published in some newspaper printed in said city, particularly specifying the object or objects for which the expenditures are proposed to be made, and the amount of moneys necessary to be raised by tax to meet the same; and immediately thereafter, the said board of trustees shall call an election, giving ten days' notice thereof, at which the said citizen tax-payers, who are otherwise qualified voters under the laws of this State, may cast their votes for or against levying a tax to meet the proposed expenditures.

The majority of all the votes thus cast, shall determine if such tax shall be levied or not. The board of trustees shall examine and declare the result, and make a certificate of the same, to be filed in the office of the city clerk. If the vote is in favor of levying the tax, the board of trustees shall forthwith order the tax or taxes to be levied and collected, and to make the proposed expenditure, *provided always*, that the special tax thus levied shall for no one year exceed more than one-half of one per cent. on the valuation of property in said city, as shown in the preceding assessment roll of said city.

Sec. 13. The voting at any election called to determine the voice of the people relative to levying such taxes as are herein provided, shall be conducted by ballot; the ballots shall have written or printed on them, "tax," or "no tax," and no person who is not both a legal voter and a tax-payer within the limits of said city, shall be entitled to vote at any such election; and a receipt for city taxes paid on the last preceding assessment, given by the collector of said city, shall, if other qualifications are not wanting, be sufficient to constitute a legal voter at such elections.

Sec. 14. The board of trustees shall succeed to all rights, titles, interest, possessions, credits, and immunities, liabilities, debts, and obligations, in law or equity, that shall be enjoyed or owed by the mayor or common council of said city of San Jose, at the time of taking effect of this act; may grant, purchase, hold, and receive property, real and personal, within said city, necessary for public purposes; may lease the same for a term not exceeding five years, for the benefit of the city; provided, that all such leases shall require a vote of at least four members of the board of trustees.

Sec. 15. It shall be the duty of the president to preside at all the meetings provided for to be held by the board of trustees; to call special meetings when he may deem the same necessary for the public interest; and to do all other things imposed upon him by this act, or the ordinances of said city.

Sec. 16. It shall be the duty of the clerk to keep a true record of all business transacted by the board of trustees from time to time; to grant certificates of license on the presentation of receipts signed by the collector, stating that the license tax imposed by ordinance, on the business of the applicants, has been paid to him; and shall keep a true list of all such licenses granted by him, and the amount of

moneys received by collecter, as shown by such receipts; to apportion the taxes upon the assessments, and to make out and deliver to the collector a tax list in the usual form, as soon as practicable after the board of equalization have equalized the assessments; and such other duties as may be prescribed by ordinance.

Sec. 17. It shall be the duty of the collector to collect all the license taxes that shall at any time be due the said city, according to the provisions of this act, and to give receipts therefor; and upon receiving any tax list, as provided for in this act, to proceed to collect the same, at the same time and manner as by law prescribed for the collection of State and county taxes; the said collector being hereby vested with the same powers to make collections of taxes, by the sale and conveyance of real and personal property, as is or shall be conferred upon collectors for the collection of State and county taxes; and it shall be the duty of said collector to collect in the same manner, any tax list placed in his hands for that purpose, without unnecessary delay, and pay all such taxes monthly to the treasurer, and take receipt therefor, retaining his percentage for collecting.

Sec. 18. And it is hereby made the duty of the board of trustees, (and countersigned by the clerk), to make out and publish in some newspaper printed in the city of San Jose, a complete statement, on the third Monday of August, December, and April, of each year, of the expenditures and receipts of the preceding four months, specifying upon what account each expenditure and receipt was made and had.

Sec. 19. And it is hereby made the duty of the city assessor, between the first day of May, and the first day of August, in each and every year, to make out a true list of all the taxable property within the limits of said city, which list, certified by him, shall be placed in the hands of the board of trustees for equalization; the mode of making out such list, and ascertaining the value of property, shall be the same as that prescribed by law for assessing State taxes.

Sec. 20. It shall be the duty of the treasurer to receive and safely keep, all moneys that come into his hands as treasurer of said city, and pay out the same on the order of the president and board of trustees (countersigned by the clerk), and take receipt therefor.

Sec. 21. The township or city justices of the peace, for the township or city of San Jose, are hereby authorized and required to take cognizance of all offences against the laws within the limits of said city; also to take cognizance of all breaches of city ordinances. The township and city constables are hereby also required to apprehend and arrest all criminals and offenders against the ordinances of said city. All violations of city ordinances, wherever a fine or pecuniary penalty is exclusively imposed, shall be prosecuted as civil actions.

Sec. 22. The board of trustees shall receive no compensation for their services, neither shall they be interested, directly or indirectly,

during their term of office, in any contract, sale, lease or agreement with the city. The clerk shall receive in compensation for his services in making out tax lists, and keeping a list of all licenses granted by him, a yearly salary of seventy-five dollars, and for his services as clerk of the board of trustees, and such other duties as may devolve upon him as clerk of said board, one hundred and fifty dollars.

The assessor shall receive a per diem allowance (not to exceed three dollars), while actually engaged in assessing the property of said city: provided, that the aggregate per diem shall not exceed one hundred dollars per annum.

The collector shall be allowed for collecting all taxes and licenses, not to exceed two and one half per cent., to be fixed by the board of trustees.

The treasurer shall be allowed for all moneys received by him one per cent., and no allowance for moneys paid out by him as treasurer.

The collector and treasurer each shall be allowed to retain in his hands the percentage due him as hereinbefore provided.

Sec. 23. All the salaries and compensations for the services of officers, provided for by this act, shall be paid by the treasurer out of any moneys in the treasury not otherwise appropriated, on the order of the president, countersigned by the clerk, at the expiration of each three months' service. No further allowance shall be made to either of said city officers for any services whatever than is herein provided for.

Sec. 24. All the city officers, whether elected by the people or by the board of trustees, shall, before entering upon the duties of their office, take the oath of office prescribed by law. The treasurer, clerk, assessor, and collector, shall each, before entering upon the duties of his office, also shall make a bond, with sureties, to be approved by the board of trustees, payable to said board, in such penalty as may be prescribed by an ordinance, to be passed by the board of trustees, conditioned for the faithful performance (of the duties of?) his office. Should the bond of any officer become insufficient to render the people of said city safe against official peculation, he shall be required to give such additional security, in conformity with the order of the board of trustees, as they may require, to be approved by them, and upon his failure so to do, his office shall be declared vacant, and a new election ordered to fill the office thus vacated.

Sec. 25. The official bond of every officer named in this act, except the bond of the clerk, shall be filed in the clerk's office; the official bond of the clerk shall be filed in the treasurer's office.

Sec. 26. The board of trustees shall constitute a board of equalization, and shall at their first meeting, after the first Monday in August in each year, or at the next adjourned meeting thereafter, hear and determine all complaints respecting the valuation of property as fixed by the assessor in the last assessment made, and shall have power

to modify such valuation in any way they, or a majority of them, shall deem just and proper.

Sec. 27. No bill or demand shall be paid out of the city treasury, unless it be allowed by the board of trustees, and signed by the president and countersigned by the clerk.

Sec. 28. The board of trustees may raise annually, by tax upon the real estate and personal property within said city, as estimated in the last preceding assessment roll, not to exceed one eighth of one per cent., for the support of common schools in said city.

Sec. 29. The taxes and licenses herein authorized to be collected, shall be collected solely in the legal currency of this State, and except the tax for the support of common schools, shall be appropriated in the following order:

First. An amount sufficient to pay the annual interest on the funded debt of said city shall first be set apart and appropriated from the first moneys coming into the treasury, also the sum of four thousand dollars as a sinking fund for the payment of the debts of said city.

Second. For the payment of the current expense of the said city government.

Third. The balance of the amount remaining unexpended in the city treasury on the day ending the fiscal year of said city, as fixed by the said board of trustees, shall be appropriated as a sinking fund for the payment of the funded debts of said city, in accordance with such laws as are now in force, or may be hereafter enacted.

Sec. 30. This act shall take effect and be in force on and after the second Monday in April, eighteen hundred and fifty-seven.

Sec. 31. The act entitled "An act to incorporate the city of San Jose," passed March 27th, eighteen hundred and fifty, and all acts and parts of acts amendatory thereof, are hereby repealed: provided, said repeal shall take effect on the second Monday of April, eighteen hundred and fifty-seven.

An Act

Amendatory of and supplementary to an act entitled, "An Act to reincorporate the city of San Jose," approved March twenty-seventh, one thousand eight hundred and fifty-seven. Approved, April 15, 1858.

The people of the State of California, represented in Senate and Assembly, do enact as follows:

Sec. 1. The second section of said act is hereby amended so as to read as follows:

Sec. 2. The government of said city shall be vested in a board of five trustees, a clerk, assessor, collector, and treasurer. The collector elected as such, shall be ex officio city marshal, and it shall be his

duty as city marshal, to enforce all ordinances passed by said board of trustees; he shall prosecute all breaches of city ordinances before any court of competent authority; he shall file his bond as collector and marshal of said city, with the city clerk, in a penalty, to be fixed by said board of trustees, payable to the people of the city of San Jose, conditioned for the faithful performance of his duties as city collector and marshal; he shall receive such compensation for his services as marshal as are allowed to constables for like services, by the laws of the State of California, and for such other services as may be imposed upon him by the said board of trustees, such compensation as may be just, but he shall receive no fixed salary as marshal of said city.

Sec. 2. The eighth section of said act is hereby amended so as to read as follows:

Sec. 8. The board of trustees shall pass such ordinances from time to time, as they may deem expedient for the regulation of the municipal affairs of the city of San Jose, provided such action shall be in accordance with the constitution of the United States, and with the constitution of the State of California, and in accordance with and not repugnant to the present charter of the city of San Jose; they shall fix the amount of penalty on the bonds of the several city officers, and such penalty shall be made payable to the people of the city of San Jose, provided the penalty on the bond of any city officer shall not be less than double the amount of money, presumed to be in his or their hands at any one time. They may license, regulate, or restrain all public amusements in said city. They shall regulate the amount of license on any and every kind of business transacted or carried on in said city, provided the license tax imposed by said board of trustees on any lawful business carried on in said city, shall not be more than the amount assessed by the State and county authorities, for or on the same kind of business, with fifty per cent. added thereto: provided also, that in the business of selling intoxicating drinks in less quantities than one quart, a license may be imposed at any amount in the discretion of the said board of trustees, and on other kinds of business carried on in said city, excepting such as are subject to the payment of a State and county license, the amount of license assessed shall be regulated by the said board of trustees at their discretion, for the best interest of said city.

Sec. 3. The twelfth section of said act is hereby amended so as to read as follows:

Sec. 12. At each meeting of the board of trustees, the said board shall inquire into the condition of the streets, bridges, school-houses, and other buildings or property belonging to said city, and if at any time, the owners of two-thirds of the real estate fronting on any street, counting from one cross street to the next cross street, shall petition the board of trustees for the privilege of constructing or repairing the sidewalks or streets by grading, paving, or otherwise, then

it shall be the duty of the board of trustees to cause an immediate survey of the proposed improvements, giving the proper grade, also the amount of excavation or filling in front of each individual's real estate to the middle of the street, or if the improvement only extends to the sidewalks, then the surveyor shall give the amount of excavation or filling of said sidewalks, and whatever improvement shall be proposed, it shall in all cases be the duty of the surveyor or engineer to make an assessment of the cost of such improvement in front of each individual's property, and the amount assessed shall constitute a lien on the real estate fronting which is the proposed improvement: provided it shall be the privilege of each and every owner of said real estate to make their improvements according to specifications made in ordinance by the board of trustees; and if the owner or owners fail to make his, her, or their improvements within the time and in the manner prescribed by said board of trustees, then it shall be made the duty of the city marshal or constable forthwith to let to the lowest bidder all that remains unfinished at the expiration of the time fixed for doing the same, and if the owner or occupant shall fail or refuse to pay for such improvements as soon as the same shall be completed, it shall be the duty of the collector to give notice that he will, at the expiration of five days, sell so much of said real estate as will pay the contractor and all costs: provided after said sale the same method that now rules in the present revenue laws of the State of California, for the redemption and transfer of property sold for the payment of taxes, shall apply to all cases where real estate is sold for the payment of said improvements: provided further, the survey and assessment of said improvements shall be done at the expense of the city, and the fees of the officers shall be the same as are now allowed for like services in collecting city taxes.

Sec. 4. The fourteenth section of said Act is hereby amended so as to read as follows:

Section Fourteen. The board of trustees shall succeed to all the rights and interest, debts and liabilities, that heretofore pertained to the mayor and common council of the city of San Jose; may grant, sell, purchase, receive and hold property both real and personal, for the use of the city: provided, that whenever there may be an ordinance voted for, by at least four of the board of trustees, for the sale of any of the real estate belonging to said city, for the purpose of paying or in any way liquidating the debts of said city, said ordinance shall be published, specifying the object of such sale of real estate, and the amount of money to be raised; and after ten days' notice being given shall, at public auction, cause the same to be sold to the highest bidder, and after receiving full payment for the same, shall cause said property to be transferred by deed, in fee to the purchaser or purchasers; said deed to be signed by the president of the board of trustees, and he is hereby authorized and empowered to make the same: provided further, that any of the real estate of said city

may be leased for a term not exceeding five years, by an ordinance, voted for by at least four of the board of trustees. It being further provided, that whenever there may be a deficiency of money in the treasury of said city to defray the necessary expenses incident to its municipal wants, after the payment of its present legal indebtedness, as prescribed in section twenty-nine of the act to reincorporate the city of San Jose, then the board of trustees may borrow, on the credit of the city, an amount of money, not exceeding two thousand dollars for any one year, on a vote of a majority of the legal voters of said city: provided, the legal indebtedness of the city, hereafter contracted, shall not exceed this amount at any one time; and the ordinance, or ordinances, authorizing the issuance of this amount of the evidence, or evidences, of indebtedness, shall be voted for by at least four of the board of trustees, and any and all members of said board of trustees, who may vote for the incurrence of a greater amount of indebtedness than the sum hereinbefore mentioned, shall be held personally responsible for the same.

Sec. 5. The twenty-first section of said act is hereby amended so as to read as follows:

Section Twenty-one. The board of trustees shall regulate by ordinances the amount of taxes to be collected on the assessed value of all the real and personal property within said city: provided, such tax shall not exceed the sum of one-half of one per cent. on the assessed value of said real and personal property, as adjusted by said board of trustees. Said board of trustees may impose fines or imprisonment for any breach of any city ordinance passed by them, provided no fine shall be imposed for a breach of city ordinance for a greater amount than one hundred dollars, nor more than thirty days' imprisonment for any one offence, or thirty days' labor on the streets and highways of said city; and all justices of the peace, and constables, or sheriff, or their deputies, within said city, are hereby authorized to take cognizance of all breaches of city ordinances within said city, and all such suits shall be prosecuted in the same manner, and under the same regulations as rules in the law regulating proceedings in criminal cases for the State of California.

Sec. 6. The twenty-second section of said Act is hereby amended so as to read as follows:

Section Twenty-two. The board of trustees shall receive no compensation for their services, neither shall they be interested, directly or indirectly, during their term of office in any contract, sale, lease, or agreement with said city.

The clerk shall receive, in compensation for his services in making out tax lists, and keeping a list of all licenses granted by him, a yearly salary of seventy-five dollars; and for his services as clerk of the board of trustees, and for all duties devolving on him as such, a yearly salary of one hundred and fifty dollars.

The assessor shall receive a per diem allowance of not more than

three dollars per day, while actually engaged in assessing the property of said city, provided his aggregate allowance shall not exceed the sum of two hundred and fifty dollars per annum. The collector shall receive for collecting all taxes and licenses, a reasonable compensation, to be fixed by ordinance of the board of trustees, which shall in no case exceed two and one-half per cent.

The treasurer shall receive for all moneys paid into the city treasury, one per cent. on the whole, but no allowance for money paid out by him as city treasurer.

The treasurer and collector shall each be allowed to retain in his hands his percentage as herein provided for.

An Act

To authorize the funding of the unfunded debt of the city of San Jose, and to provide for the payment of the same. Approved April 21, 1858.

Whereas, a portion of the debt of the city of San Jose, which was authorized to be funded by said city, by an act approved April nineteenth, A.D. one thousand eight hundred and fifty-six, authorizing the funding of the debt of the city of San Jose, and to provide for the payment of the same, was not funded, and whereas the creditors of said city are desirous of funding the said unfunded debt. Therefore,

The people of the State of California, represented in Senate and Assembly, do enact as follows:

Sec. 1. The city of San Jose is hereby authorized and empowered to fund its unfunded debt, contracted prior to the first day of January, A.D. one thousand eight hundred and fifty-eight, and to that end a board of commissioners is hereby created, to consist of William Daniels, Thomas Fallon, and James C. Cobb, to be styled the board of commissioners for the funded debt of the city of San Jose, and shall have and exercise the powers, and perform the duties hereinafter provided, and they and their successors shall continue as trustees for the trust hereinafter provided, until the debt hereinafter provided to be funded shall be paid, and the object of this act shall be carried out and completed.

The said commissioners shall, before they enter upon the discharge of their duties, file with the clerk of the board of trustees of said city, a joint and several bond, payable to said city, in a penalty of fifteen thousand dollars, conditioned for the faithful performance of their duties under this act; and they shall each make and subscribe an oath, before some competent authority to administer oaths, that they will faithfully discharge their duties, and attend to the interest of all parties concerned in the provisions of this act.

Sec. 2. The said commissioners, herein provided for, shall cause to

be prepared, and shall have the power to issue on behalf of said city, bonds, including those already issued by said city, an amount not exceeding in all the sum of forty-five thousand dollars, bearing interest at a rate not to exceed twelve per cent. per annum, of the denomination of five hundred dollars, with coupons for interest attached, which bonds shall be made payable at the treasurer's office in said city, on or before the first day of January, A.D. one thousand eight hundred and seventy, and interest on the same shall be made payable, and paid by the treasurer of said city, at his office, semi-annually, on the first day of January and July of each year, on presentation of the respective coupons therefor. Every bond so issued shall be signed by each member of said board of commissioners, and be authenticated with the corporate seal of the city of San Jose, and shall purport that the city owes the holder thereof the sum named in the bond, payable and bearing interest as aforesaid. The coupons shall also be signed by each member of said board of commissioners.

Sec. 3. Said commissioners may issue said bonds at par, to persons holding indebtedness, in exchange and cancellation of the same.

Sec. 4. The said board of commissioners shall hold their meetings in the city hall of said city, as often as they may deem proper for the transaction of any business imposed on them by this act.

They shall choose a secretary from their own body. It shall be the duty of the secretary of said board to attend the meetings thereof, and he shall keep a correct minute of their proceedings; he shall also keep a register of the amount of the blank bonds received, and of the amount of each bond issued, its date, to whom issued, for what purpose, its number, and when payable. Said board of commissioners shall deliver over to the clerk of the board of trustees of said city, all records, papers, &c., connected with business under this act, whenever the same shall be fully completed.

The secretary of said board of commissioners shall receive no compensation whatever as secretary for the performance of his duties under this act.

The said commissioners shall publish annually, on the first day of January of each year, a full report of their entire proceedings for the year.

Sec. 5. No appropriation shall be made out of the yearly revenue arising from taxation of the real and personal property of said city, until sufficient money shall have been set aside to pay the interest upon all the bonds outstanding.

There shall also be set aside from each year, by revenue derived from taxation upon the real and personal property of said city, the further sum of four thousand dollars, as a sinking fund for the redemption of the bonds of said city, issued as well under this act as under an "Act to authorize the funding of the debt of the city of San Jose, and to provide for the payment of the same. Approved, April nineteenth, one thousand eight hundred and fifty-six." So

that four thousand dollars of the bonds of said city, issued under this act, and under said act of April nineteenth, one thousand eight hundred and fifty-six, may be redeemed annually. But the said city shall not be compelled to redeem more than four thousand dollars of her funded debt, whether under this act or the act of April nineteenth, one thousand eight hundred and fifty-six aforesaid, annually. Whenever said city, or the commissioners herein provided, shall have funds to redeem any greater sum than four thousand dollars of her funded debt, the board of commissioners are hereby authorized so to redeem such additional amount of bonds in the same manner as the four thousand dollars above and hereinafter specified may be redeemed.

Sec. 6. On the first Monday of January and July, one thousand eight hundred and fifty-nine, and semi-annually thereafter, it shall be the duty of the city treasurer, from the moneys in his hands, set aside and appropriated for that purpose, to pay the semi-annual interest on the bonds outstanding, and also to redeem four thousand dollars annually, on the first day of January of each year, of the principal of bonds issued under this act, and of the said act of April nineteenth, one thousand eight hundred and fifty-six, together, by previously advertising, for two weeks, in some public newspaper, publishsd in the county of Santa Clara, for proposals for the redemption of said bonds, and for such other additional amount as the board of trustees of said city, and the commissioners herein provided for, may authorize.

The treasurer shall open the sealed proposals, at the time and place specified in the notice published as aforesaid, in the presence of the president of the board of trustees of said city and the commissioners, and such persons as may choose to be present, and shall accept only such bids as shall cancel the greatest amount of said bonds: provided, that no bonds shall be redeemed at a rate greater than one hundred cents in the dollar, in bonds, unless otherwise directed by ordinance of the board of trustees of said city; and all bonds that shall be redeemed, or coupons that shall be paid, shall be marked "cancelled," and be cut on the day of their redemption, and be passed over within thirty days to the board of commissioners.

Sec. 7. There shall be but one sinking fund under this act, and the act of April nineteenth, one thousand eight hundred and fifty-six, aforesaid; and all bonds issued under both acts shall be entitled to be redeemed in the same manner and out of the same sinking fund.

Sec. 8. Each member of the board of commissioners shall be entitled to receive the sum of two hundred dollars per annum for services under this act, but no other compensation.

Sec. 9. The board of trustees of the city of San Jose shall have power to pass any ordinances necessary to carry into effect the provisions of this act.

Sec. 10. The board of trustees of the city of San Jose are hereby required to convey to the commissioners of the funded debt created by this act, on their application therefor, all the property, and rights,

titles, and interest in property belonging to said city, together with lands, and rights in lands, or claims to the same, held or owned by the former pueblo de San Jose de Guadalupe, and all the public rights of said pueblo; said lands to be held by said board of commissioners in trust for the payment of the debts herein provided to be funded. Said board of commissioners shall have power to sell or dispose of such lands, in such manner as they may deem the best interests of the city shall require; and all moneys received from the disposal of such lands shall be applied to the payment of the debts hereby funded, after paying the necessary expenses of said board. Said board shall have power, in their name as commissioners of the funded debt of the city of San Jose, to sue for, and bring all necessary suits, and take all necessary proceedings for the recovery of, or preservation of, or securing the property by this act provided to be conveyed to them. The property so conveyed shall be free from taxation, as against said city of San Jose or the board of commissioners, and said property shall also be exempt from execution as against said city.

Sec. 11. The District Court, having original civil jurisdiction within the county of Santa Clara, shall have power to enforce obedience to the provisions of this act, and for that purpose may issue process of mandamus, distringas, sequestration, and attachment; and any public officer who shall wilfully violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and shall be liable to indictment and punishment therefor.

Sec. 12. All vacancies in said board of commissioners shall be filled by the board of trustees of the city of San Jose. A vacancy shall be deemed to have occurred by the death, resignation, or absence from the city of San Jose six months successively of either of the persons acting as such commissioners.

An Act

Supplementary to, and amendatory of, an act entitled "An act to authorize the funding of the unfunded debt of the city of San Jose, and to provide for the payment of the same, approved April twenty-first, eighteen hundred and fifty-eight." Approved March 7th, 1859.

The people of the State of California, represented in Senate and Assembly, do enact as follows:

Sec. 1. Section 8 of "An act to authorize the funding of the unfunded debt of the city of San Jose, and to provide for the payment of the same," approved April twenty-first, eighteen hundred and fifty-eight, is hereby amended so as to read as follows:

Section Eight. The said board of commissioners shall be entitled to receive for their services under said act, a commission, not to exceed five per cent. on the amount of moneys received by them for the

sale and disposal of the lands mentioned in section 10 of said act, which commission may be retained by said commissioners out of any moneys arising from such sale; and no other compensation shall be allowed said board of commissioners.

Sec. 2. Section 10 of said act is hereby amended, so as to read as follows:

Section Ten. The board of trustees of the city of Jan Jose are hereby required to convey to the commissioners of the funded debt, created by this act, on their application therefor, all the property, and rights, titles, and interests in property, belonging to said city, together with lands and rights in lands, or claims to lands held or owned by the former pueblo de la San Jose de Guadalupe, and all the pueblo rights of said pueblo; said lands to be held by said board of commissioners in trust for the payment of the debts herein provided to be funded. Said board of commissioners shall have power to sell or dispose of said lands, in such manner as they deem the best interests of the city may require; and all moneys received from the disposal of said lands shall be applied to the payment of the debts herein provided to be funded, after paying the necessary expenses of said board of commissioners.

Said board shall have power in their name as commissioners of the funded debt of the city of San Jose to sue for and bring all necessary suits, and take all necessary proceedings for the recovery of, or preservation of, or securing the property by said act provided to be conveyed to them.

The property so conveyed shall be free from taxation as against said city of San Jose, or the board of commissioners; and said property shall also be exempt from execution as against said city: provided, that no sale or disposal of such lands by said board of commissioners shall be held legal and valid, except the same receive the sanction and approval of the city government of said city.

Sec. 3. When a vacancy shall occur as provided in section 12 of said act, a new bond shall be required of each of said commissioners as provided in section 1 of said act, which bond shall be justified to before some proper officer, and be deposited in the office of the clerk of said city.

Sec. 4. The secretary of the board of fund commissioners shall make out a certified copy of the registry of blank bonds received by him, the amount of each bond issued, its date, to whom issued, for what purpose, its number, when payable, when and to whom paid, and for what amount, which he shall cause to be filed by the clerk of the city in his office. Said secretary shall also furnish to the city government of said city, on or before the first day of January of each year, a full report of the entire proceedings of said board for the entire year, and for his failure to comply with the requirements of this section said secretary shall be removed from office by the city authorities of said city.

This act shall take effect from and after its passage.

The defendants then rested, and the plaintiff in rebuttal introduced C. T. Healy as a witness, who testified that he is county surveyor of Santa Clara county, and is well acquainted with the boundaries of the land described in the patent given in evidence, and also with the corporate limits of the city of San Jose as fixed by the act of incorporation. That the said limits are the same now as were fixed by the original act of incorporation in 1850. That from the centre of the city of San Jose to the nearest point of the land as embraced by the patent, is about three miles, and to the farthest point about ten miles. That none of the said patented lands are within the corporate limits of said city, and thinks that the boundaries of the pueblo lands, as described in the expediente of 1827–8, embraced from 130,000 to 150,000 acres.

The plaintiff then put in evidence a document in the Spanish language, which it was admitted forms a part of the archives of the Spanish government now in the custody of the surveyor-general of the United States for California, which document translated into English is in the words and figures following:

Statement, which shows the allotments of land distributed to the settlers of the pueblo of San Jose, exhibiting those which belong to each one, and they are of two hundred "varas" square, for informations to the Senor governor, to wit:

(For diagram, see original, page 563.)

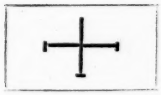
Don Pedro Fages, Lieutenant-Colonel of the Royal Army, and Governor of Old and New California, &c.:

Inasmuch as the title 14 of the royal regulation which governs in this peninsula is provided the mode of distributing *solares* and *suertos* of land, with all else relating to cultivation and raising of cattle, and the establishment and advancement (fomento) of pueblos of civilized people (gente de razon) which may be located in the territories adjacent to the presidios of these new establishments, and it being convenient to practice the formalities requested in giving possession to the citizens of San Jose de Guadalupe, in order that they may subsist in peace and quietude:

Therefore, I commission D. Jose Moraga, lieutenant commandant of the presidio of San Francisco, to proceed to the said pueblo, and conformably with the instructions contained in the aforesaid royal regulation, give possession in the name of his majesty (whom God preserve) to each one of the settlers of the suertes and solares which are destined for them, proceeding by formal acts, and in continuation of this mandate, forming for each one of the parties interested a despache, with of a copy of this espediente, and of the proceedings relating to each; he will remit the same for confirmation, in

Coyote Stream.

River of the "Saca de Agua."

To  over.

Crown.	Of Manuel Amesquita.	Of ditto Amesquita.	Crown.
Of Sebastian Adbitre.	Of Claudio Albirez.	Of ditto Albirez.	Of Manuel Gonzalez.
Of ditto Adbitre.	Of Bernardo Rosalez.	Of ditto Rosalez.	Of ditto Gonzalez.
	Of Francisco Abila.	Of ditto Abila.	Of Josef Tiburcio Bosquez.
	Of Antonio Romero.	Of ditto Romero.	Of ditto Bosquez.
	Of Ignacio Archuleta.	Crown.	
	Of ditto Archuleta.		

Note.—The distribution of lands marked out was made by me, the lieutenant and commandant of the presidio of San Francisco, in accordance with the order of the governor, and they were delivered to their owners on the 23d day of April, 1781.

San Francisco, 1st of June of said year.

(Signed) JOSEPH MORAGA.

Note.—That which remains of this measurement consists of many low places, for which reason it was left for the Crown.

Up to here is the measurement of the third part of the road to the mission.

order that this government, in view thereof, determine as may seem convenient; enjoining that it must appear (in said espediente) that the citizens are made aware of what is realings and what is common (comun) as the ejidos, watering places, fuel, &c.; that it must be expressed in each despatch and proceeding, giving possession, that it is received and admitted, subject to the conditions and penalties which the said instructions imposes, as well as the privileges, favors and exceptions with which the sovereign makes the grant, and all must sign, or some other at their request, with the commissioner himself, and witnesses: and lastly, that in the principal book of records an entry shall be made of their possessions, as well as of the branding-irons (for marking the cattle) which are to be given to them, of all which a certified transcript (testimonio) is to be obtained and archived in the presidio of San Francisco.

PEDRO FAGES.

MONTEREY, Oct. 24, 1782.

In the pueblo of San Jose Guadalupe, on the thirteenth day of the month of May, one thousand seven hundred and eighty-three, I, Don Jose Moraga, lieutenant-commandant of the royal Presidio of San Francisco, in pursuance of the mandate which precedes, must proceed to its punctual fulfilment, and as the said instruction, in articles 4 and 5, declares, &c. (here is inserted verbatim, the 4th and 5th articles, title 14, of the regulation of 24th October, 1781); being fully aware of all which, it is my duty to command, and I do hereby command, that immediately, and in the said pueblo, day, month, and year, I proceeded with those of my assistants, and the settlers of the arable lands, and measurement having been first made two hundred varas in length, and two hundred in breadth of each suerto,

I gave possession to the said Alcalde Ignacio Archuleta, of the four suertes of land to which he is entitled, all irrigable, there being sufficient of the description provided for in the instruction for pueblos of civilized people (gente de razon), is the description which is omitted, the possession given with the said formalities, and requisitions expressed in the foregoing proceeding, relating to the solar of the same Ignacio Archuleta, and I did the same with those of my assistance.

JOSE MORAGA.
JOSE FIBURCIO BASQUEZ.
FELIPE TOPIA.
JUAN JOSE PERALTA.

(The next act is that of delivering the branding-irons for marking cattle. The formalities practised in giving possession to the other settlers are precisely the same; after which follows the designation of Ejido, and setting apart suertes of land for propios of the pueblo.)

In the pueblo of San Jose Guadalupe, on the 17th of May, of the year one thousand seven hundred and eighty-three,

I, D. Jose Moraga, lieutenant-commandant, and commissioner for the execution of the proceedings, in duty ought to and do, order the acts of giving possession of the solares and suertes of the land to which each settler of the said pueblo is entitled, being concluded, that I do proceed with them to the lands of the part to the of this pueblo and its river, and the measurements having been made from the and the river below, with the boundary which divides the lands of the said pueblo from those of the said mission of Santa Clara, from such measurement, there resulted 1958 varas to the said boundary; of this quantity, the half is designated for the propios of the pueblo, and the remainder is to be considered royal land (realings), with all the rest of the land which is not comprehended in the portions of which possession has been given to settlers, and for ejidos of the said pueblo, there is designated all the fifteen hundred varas in length, and seven hundred in breadth, with all of which I made them fully acquainted, and they unanimously said that they understood as well what belonged to their respective possessions, as what was propios of the pueblo, and what royal land (realings), with all else which has been made known to them; and not knowing how to sign, Jose Fiburcio Bazquez did, at the request of all, I did the same with the present witnesses, which I authenticate.

JOSE MORAGA.
JOSE FIBURCIO BAZQUEZ.
FELIPE TOPIA.
JUAN JOSE PERALTA.

When the proceedings shall be concluded, with the execution of whatever may be justly required, the original being remitted to the governor for his approbation, or for the purposes for which to him may seem meet, and that a copy remain in the archives under my charge.

Thus I have ordained, decreed, and signed, which I authenticate.

JOSE MORAGA.

In the same pueblo, day, month, and year above expressed, I, the said lieutenant-commissioner, for the possession and repartamento of solares and suertes of land to the settlers of the pueblo of San Jose de Guadalupe, in view of the act which precedes, it being indispensable, in order to execute it, to appoint assistant witnesses during the progress of the proceedings, do name for that purpose soldiers Felipe Topia and Juan Jose Peralta, whom I made aware of the contents of this appointment, in order that in view of the circumstances corresponding, they might obligate themselves to give their assistance in the respective acts.

Thus I have decreed, ordained, and signed, which I authenticate.

JOSE MORAGA.

In the said pueblo, day, month, and year aforesaid, I, the said lieutenant-commissioner, by virtue of the preceding appointment, having in my presence, Felipe Topia and Juan Jose Peralta, soldiers of the company of the royal presidio of San Francisco, made known to them the preceding decree, the which having heard, they said that they accepted the said appointment and promised their assistance in these proceedings, with the punctuality which I exact of them, and they signed with me, which I authenticate.

JOSE MORAGA.
FELIPE TOPIA.
JUAN JOSE PERALTA.

In the said pueblo, on the 14th day of May, in the year one thousand seven hundred and eighty-three, I, the said lieutenant-commissioner, in continuation of these proceedings, in duty ought to and do command to appear before me and the witnesses of my assistance, the nine pobladores (letters) of the said pueblo, and having all present, in the name of his majesty (whom God preserve), I gave possession of the respective solar, thirty varas square for a dwelling-house, to the alcade and settler Archalta, who was made acquainted therewith, and he said he was aware of the privileges, favors, and exceptions with which the sovereign made him this concession, under the penalties imposed on the disobedient; and being interrogated, if he admitted the possession given, replied that he did, and offered to fulfil the obligations contracted in his establishment (here follows the occupation of the lot). Not knowing how to sign, Fiburcio Bosquez did it at his request. I did the same with the assisting witnesses.

JOSE MORAGA.
FELIPE TOPIA.
JUAN JOSE PERALTA.
FIBURCIO BOSQUEZ.

In the aforesaid presidio, on the first of the month of September, 1783, said lieutenant commissioned for these proceedings, and in consideration of their being finished, ordered: that originals be remitted as is prescribed in the preamble, and that an authorized copy remain in this archive, which is under my charge. So I provided, ordered, and signed, as aforesaid.

(Signed) JOSE J. MORAGA.

(Here follow the acts of possession of the other pobladores in the same form as that of Archeluta.)

It was admitted that the lands embraced in this document, and set apart by Moraga for the use of the inhabitants of said pueblo, do not include any portion of the lands embraced to the patent of Chaboya.

The plaintiff then read in evidence a notice of appeal and order of

the district court, granting the same in the case of the United States *v.* Mayor and Common Council of the City of San Jose, which are as follows:

Office of the Attorney-General of the United States.

WASHINGTON, 15 April, 1851.

286. "Pueblo Lands."

The Mayor and Common Council of the city of San Jose, claimants.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 17th day of March, 1851, the appeal in the District Court of the United States for the Northern District of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

JOHN A. MONROE, Esq.,
Clerk U. S. D. C.

Indorsed: Filed June 2d, 1856. John A. Monroe, clerk, by W. H. Cheevers, deputy.

At a stated term of the District Court of the United States of America for the Northern District of California, held at the court room in the city of San Francisco, on Thursday, the 16th day of February, in the year of our Lord one thousand eight hundred and sixty, for the trial of land cases.

Present, the Honorable M. Hall McAllister, circuit judge.

THE UNITED STATES
v.
MAYOR AND COMMON COUNCIL OF THE CITY OF SAN JOSE. } No. 419.

In this case, on application of Tully P. Wise, Esq., acting U. S. attorney, made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court, rendered in said cause at the June term, 1859, be, and the same is hereby granted; and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause, be sent to the Supreme Court of the United States without delay.

M. HALL McALLISTER,
Circuit Judge.

The plaintiff then called R. C. Hopkins as witness, who testified that he is and for some years last has been a clerk in the office of the

U. S. surveyor-general for California, and as such has charge of the Spanish and Mexican archives in said office.

That amongst said archives is an index made by Jimeno, secretary of State under Gov. Micheltorena, which purports to contain a list of the grants made by the governors of California, from about the year 1831 or 1832, down to the close of the year 1844. The said expedientes are numbered on said index from No. 1 to 579, in ink; another class, number 314, of expedientes not complete, each numbered separately; class numbering 579 are numbered in ink from 1 to 438 by Jimeno, and therein on to 579 by Hartnell, who was in charge of the archives in 1849; class 314 were numbered in pencil in the office of the surveyor-general of the United States, merely for convenience.

In the numbers by Jimeno, there is a skip from number 329 to number 340.

The expediente of 1837 of the pueblo of San Jose, offered in evidence by defendants, is not among those numbered by Jimeno; it is numbered 339; that is not an original number; it is in the handwriting of De Zaldo, at one time a clerk in the office of the surveyor-general, and who had charge of the archives.

Jimeno's index does not refer to this expediente of 1837.

At the foot of the index, in the handwriting of Jimeno, is a memorandum, to the effect that by mistake he had omitted the numbers from 329 to 340.

Witness said this was by a skip in the numbers, not an omission of expedientes.

On cross-examination the defendant's counsel inquired of the witness whether the said index contained any reference to a grant from Gov. Alvarado to Antonio Chaboya, in the year 1840, to which the plaintiff objected, and the court sustained the objection; to which ruling the defendants excepted at the time.

The plaintiff then put in evidence a document which it was admitted formed a part of said archives, and which when translated into English, is in the words and figures following.

Jose Figueroa, brigadier-general of the Mexican republic, commanding general, inspector, and superior political chief of the territory of Upper California.

The most excellent territorial deputation, desirous to apportion to the pueblos the necessary funds for the expenses and marks of public utility, has been pleased to ordain the following

Plan of ways and means for Municipal Funds of the Corporations of the Territory of Upper California.

Art. 1st. The corporations will proceed by the customary methods to solicit that there be laid out, to each pueblo, lands for commons and property.

2d. The lands of property which may be apportioned to each pueblo shall be subdivided into moderate and small portions, and may be rented or sold at once, at public auctions. The actual possessors of such lands shall pay the yearly tax, which, in the judgment of the corporations, by previous information of three intelligent and veracious persons, may be imposed thereon.

3d. For the grant of a lot on which to erect habitations, the parties interested shall pay six dollars two rials, for each lot of one hundred varas square, and so progressively, or diminutively, they shall pay at the rate of two reals per vara front.

4th. The constitutional corporations, in their respective demarcation, shall be able to concede provisionally the use of branding-irons, that, at the request of parties interested, they may present for record, collecting for each one of them, at the time of conceding the permission, the amount of twelve rials, which shall be applied to the municipal funds.

5th. The political chief hereby commands, and all persons are informed, that the individual who may not have the corresponding record of the branding-iron which he has in use, will be obliged to present himself to the corporation of his jurisdiction, for the object of obtaining the respective permission, as is indicated by the foregoing record, for which they shall pay likewise the same sum which is determined by the 4th article hereof.

6th. For the slaughtering of a head of cattle for general or private purposes, the owner shall pay a half real, a like sum for a sheep, and two rials for a pig.

7th. The stores in which wearing apparel is sold shall pay one dollar per month; and retail liquor and grocery stores, bar-rooms, and any other business, four rials.

8th. Every apparatus used to weigh or measure, when the same is sealed by the gauger, shall pay a tax, one rial.

9th. The performers of rope-dancing, actors, and puppet-shows, shall be taxed two dollars for every exhibition.

10th. Billiards shall pay one dollar per month.

11th. In the ports of Monterey, San Francisco, Santa Barbara, San Pedro, and San Diego, every national ship that does not belong to the navy, shall pay a municipal tax of one half rial for every package landed for the purpose of trade; and foreign vessels in like manner shall pay one rial per package in the aforesaid ports.

12th. The two rials per ton on foreign vessels, which, according to art. 4 of the tariff of maritime customs of 16th November, 1827, were ceded to the States, shall be solicited from the supreme government, that it may granted to the territory as belonging to it, which products go into the treasury of the deputation.

13th. Those engaged in fishing and other hunting, shall pay for every pelt, and the size of which may be upwards of a vara, four rials; and for beaver-skins they shall pay the same sum of four rials.

14th. The pecuniary fines which for trifling transgressions the constitutional alcaldes may impose, and likewise the political chief, such sums shall be applied to the municipal funds.

15th. The municipal tax which domestic liquors have heretofore paid are reduced, from the publication of this decree, to three dollars per barrel of aguardiente, two dollars per barrel of angelico, and twelve rials for each one of wine, which the importers shall pay at the place where they sell it.

16th. Foreign aguardiente, imported into the country for the purpose of trade, shall pay a municipal tax of one dollar per gallon; gin shall pay the same duty; wine and beer shall pay four rials per gallon.

17th. There is established a voluntary contribution for all vessels domestic and foreign that may cast anchor in the bay of Monterey, for the exclusive object of building a wharf. Every captain, supercargo, or master of a vessel, may give what he voluntarily pleases. The captain of the port shall collect and preserve in his charge the proceeds of this contribution, and it shall be employed exclusively in the construction of the wharf, and this work being finished, the contribution shall cease.

18th. For every auction in which merchandise is publicly sold, the auctioneers shall pay three dollars for municipal tax.

19th. In consideration of the urgency of funds for the ordinary expenses and pre-eminent operations of the pueblos, in conformity with specification 4th, article 335, of the constitution now in force, and previous to the ascension of the political chief, he will exercise the discretionary powers accorded to him in the articles 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, and 18, thereof, which the said political chief orders to be observed in the usual terms.

20th. This plan shall be reported to the supreme government, soliciting the approbation of the general congress to the same.

21st. The director of the maritime custom-house is requested by the political chief to give notice to the corporation of this metropolis of the quantity and qualities of liquors that he may gauge for every vessel, so that, in view of the aforesaid notice, the precautions may be taken which appear most expedient to him for the object of avoiding any fraud.

And in order that all persons may be informed hereof, it is ordered that the same be published by proclamation, and that due compliance be given to the same, by posting it in the public places, and circulating it, to whomsoever belongs the care of its observance.

Given in Monterey on the 6th of August, 1834.

JOSE FIGUEROA.

AGUSTIN N. ZAMORANE,
Secretary.

State of California, county of Santa Clara, city of San Jose, *ss.*

I, Chapman Yates, city clerk of said city, and as such having in my custody, and under my control, the documents and archives of the former pueblo of San Jose, do hereby certify that the foregoing is a full, true, and correct copy of an original document now on file in the archives of said city of San Jose in my office.

[L. S.] In testimony whereof, I have hereunto set my hand and affixed the seal of said city, this 24th day of April, 1858.

CHAPMAN YATES,
Clerk of the City of San Jose.

The plaintiff then called Juan B. Alvarado as a witness, who testified that he was the governor of California from 1838 to 1842. That in the year 1837 he was the "political chief" of California. Being shown the expediente of 1837–8, says he recognizes it. That he is the same Alvarado who issued the order contained in said expediente, directing the ayuntamiento of San Jose to appoint a commission to ascertain and report upon the boundaries of said pueblo lands. That he received from the secretary's office the report of said commissioners, and it "went into form;" that is, it became the basis of an expediente instruction, which, when completed, was to be forwarded to the Departmental Assembly; and this had to be done before the Assembly could pass upon a petition for an assignment of "ejidos." That nothing was done after this with the expediente. It remained in suspense in the office. The governor did nothing at all in reference to it; it never was presented to the Departmental Assembly. That Jimeno was secretary of state from 1839 to 1842.

This was all the evidence in the cause; whereupon the defendants moved the court for the following instructions to the jury:

1st. That if the jury believe from the evidence that the pueblo of San Jose de Guadalupe was duly established and founded under the authority and with the sanction of the government of Spain; and if they shall also believe from the evidence that whilst the said province belonged to Spain, common lands were assigned and marked out by the authority of the Spanish government, and designated by metes and bounds for the common use of the inhabitants of said pueblo, and that the said inhabitants used and occupied the said lands in common, so long as Upper California continued to be a province of Spain; then and in that event the fee of the said lands became and was thereby vested in the said pueblo and the inhabitants thereof.

2d. That if the pueblo of San Jose de Guadalupe was established and fouuded by the authority and with the sanction of the Spanish government, in or about the year 1779, and if lands for the common use of the inhabitants of said pueblo were soon afterwards, to wit, in or about the year 1801, marked out, designated, and set apart by metes and bounds, by the authority and with the sanction of the Spanish

government; and if the said lands so set apart and designated were used and occupied by the said inhabitants in common, from the time of such designation and setting apart, until the 7th day of July, 1846, then the jury may presume from the facts aforesaid that the said lands so set apart were granted by the king of Spain to the said pueblo for the common use of the inhabitants thereof.

3d. That if the pueblo of San Jose de Guadalupe, on and prior to the 7th day of July, 1846, existed as a town, city, or village, and if before then, common lands for the use of the inhabitants thereof in common had been set apart and designated by well-known metes and bounds, either by the Mexican government, after its independence and revolt from Spain, or by the Spanish government prior to such revolt; and if after and from the time of such setting apart the said pueblo and the inhabitants thereof used and occupied said land in common for the pasturage of their cattle up to the 7th day of July, 1846, then and in that event the facts aforesaid will be *prima facie* evidence of a grant of said lands to such corporations.

4th. That if the pueblo of San Jose de Guadalupe, on and prior to the 7th day of July, 1846, existed as a city, town, or village, and if before then common lands, for the use of the inhabitants of said pueblo, had been set apart and designated by well-known metes and bounds, either by the Spanish government, whilst Upper California was a province of Spain, or by the Mexican government after its revolt from Spain; and if the lands so set apart were used and occupied by the said inhabitants in common for the pasturage of their herds, from the time of such setting apart up to the 7th July, 1846, then and in that event the act of Congress approved March 3, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," operated proprio vigore as a relinquishment on the part of the United States to the said pueblo and the inhabitants thereof, of all *all* the right, title, and interest, legal or equitable, of the United States in and to the said land, and is equivalent to a patent.

5th. That if the pueblo of San Jose de Guadalupe, on and prior to the seventh day of July, 1846, existed as a city, town, or village, and if before then common lands for the use of the inhabitants of said pueblo, had been set apart and designated by well-known metes and bounds, either by the Spanish government, whilst Upper California was a province of Spain, or by the Mexican government after its revolt from Spain; and if the lands so set apart were used and occupied by the said inhabitants in common for the pasturage of their herds from the time of such setting apart up to the 7th July, 1846; and if the lands in controversy in this suit and described in the complaint, are embraced in and form a part of the said common lands so set apart as aforesaid; and if Antonio Chaboya, the patentee mentioned in the patent given in evidence by the plaintiff, entered into the possession of the lands described in said patent, with the permis-

sion and license of the authorities of said pueblo, then, and in that event, neither the Board of United States Land Commissioners, nor the District Court of the United States, mentioned in said patent, had competent jurisdiction to enter the decree of confirmation described in said patent, and the said decree and patent are void.

6th. That if the pueblo of San Jose, for more than forty years prior to the 7th day of July, 1846, had used and occupied the lands in controversy as common lands of the said pueblo, and if Antonio Chaboya, the patentee, mentioned in the patent given in evidence, entered into the possession of the lands in controversy under and with the permission and license of the authorities of the said pueblo, then the said pueblo acquired a title by prescription.

7th. That if the land in controversy has been confirmed to the mayor and common council of the city of San Jose by metes and bounds, by a final decree of the District Court of the United States for the Northern District of California; and if the defendants are in possession, under mesne conveyances from the said mayor and common council, or with the license and permission of the said mayor and common council, then the patent given in evidence by the plaintiff is not conclusive as against the defendants; and the fact that an appeal has been taken by the United States from the said decree of the District Court to the Supreme Court of the United States, and that said appeal is now pending, does not impair its effect as a final decree for the purposes aforesaid.

8th. That if the pueblo of San Jose de Guadalupe existed as a city, town, or village, on the 7th July, 1846, and if, before then, lands had been assigned and set apart by metes and bounds to the said pueblo for town lots, farm lots, pasture lots, or village lots, either by the Spanish government, whilst Upper California was a province of Spain, or by the Mexican government, after its revolt from Spain, and if the land in controversy in this suit is a part of any such town lot, farm lot, or pasture lot, so set apart by metes and bounds, and if Antonio Chaboya, the patentee mentioned in the patent given in evidence by the plaintiff, entered into the possession thereof, by the license and under the permission of the authorities of said pueblo, then, and in that event, neither the board of United States land commissioners, nor the District Court mentioned in said patent, had jurisdiction to render the decree of confirmation recited in said patent, and the said decree and patent are void; and in ascertaining whether or not the said land is embraced in any such town lot, farm lot, pasture lot, or village lot, within the contemplation of the 14th section of the act of Congress, approved March 3d, 1851, entitled "An Act to ascertain and settle the private land claims in the State of California," the jury will have reference to the laws, usages, and customs of the Mexican and Spanish governments in respect to such lots.

To the giving of each and all of which the plaintiff objected, and

the court sustained the objection, and denied each and all of said instructions, to which ruling of the court the defendants excepted at the time.

The plaintiff then moved the court for the following instructions to the jury:

1st. That the jury must be satisfied that the boundaries claimed by the defendants, as the boundaries of the pueblo of San Jose were actually assigned or granted to said pueblo by competent Mexican authority, in order to find such boundary established.

2d. That in proving a claim of title to lands, a pueblo, as any other claimant, must establish, by competent legal testimony, a legal title, either by concession, grant, or assignment of boundaries, by way of grant; that is to say, that when such assignment of boundaries was made by the granting power, it was done with the intention to vest in the pueblo, not the mere right to the use, but the full proprietorship of the land.

3d. That the authorities of San Jose had no more inherent legal right to establish the boundaries of their pueblo than had any other applicant to the government for a grant of a tract of land.

4th. That the proceedings of the commissioners of 1837–8, marking out the claimed boundaries, were not sufficient to establish these boundaries until ratified and confirmed by the superior authorities; and that they were, until such confirmation, merely in the nature of a commission of inquiry.

5th. That the pueblos of California, and among them that of San Jose, held their common lands, that is, the lands outside of their actual settlement, and also outside of their solares, suertes, and propios, by a mere usufructuary tenure, and not by title in full proprietorship.

6th. That if the jury find that the lands described in the complaint are part of the common lands of the former pueblos of San Jose (bearing in mind the meaning of the term common lands, as explained in the last instruction), then the defendants in this case have not established that said pueblo had such a legal title to said common lands as to enable them to resist a claim made under a patent from the United States government, deraigned by proper mesne conveyances from the patentee to plaintiff.

7th. That so much of section fourteen (14) of the act of Congress, entitled "An Act to ascertain and settle the private land claims in the State of California," as says, "the provisions of this act shall not extend to any town lots, farm lot, or pasture lot, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Spanish or Mexican government, or the lawful authorities thereof," do not apply to the land granted to Chaboya by the patent produced, or to the proceedings of said Chaboya recited in said patent.

8th. That unless the jury should find that the land embraced within

the patent to Chaboya constituted a city, or town, or village lot; which city, town, or village, existed on the seventh of July, 1846, or at the time the act of March 3, 1851, was passed; then there is no grant of said Chaboya land to the pueblo of San Jose, or the city of San Jose, by the 14th section of the act of 3d March, 1851.

9th. That the tenure by which the pueblos of California, including San Jose, held their common lands, being merely usufructuary, and not proprietary, no right by prescription could arise in favor of the pueblo of San Jose to her common lands by lapse of time.

To the giving of each and all of which the defendants objected, but the court overruled the objection, and gave each and all of said instructions to the jury, to which ruling the defendants excepted at the time.

The court then charged the jury as follows:

Gentlemen of the Jury:

It becomes now my duty to enunciate the principles of law which should control your action in this case.

In the performance of that duty, I am cheered by the reflection that if error be committed by this court in its rulings, that error will be corrected by an appellate tribunal on a writ of error.

These principles will be enunciated to you in the form of instructions, so as to enable the party who may deem such error has been committed, with a greater facility to have it corrected, if in fact it exists.

This is my duty, and yours is equally imperative, although different in character.

It is your duty to receive the law from the court, and apply it to the facts as you may find them from the evidence which has been given in this case.

As to my duty: the principles of law involved to a great extent in this case, have been argued and canvassed by judicial tribunals and professional men, influenced to a considerable extent by the magnitude of the interest involved, and the number of instances in which those legal principles have been discussed. After an examination of them, though a few of them may be novel, the court is convinced that any intrinsic difficulty in them has been greatly enchanced by the foregoing circumstances.

I proceed to announce to you the following six instructions, to enable you to act intelligently in the discharge of your duty in the adjustment of the rights of the parties.

1st. The present controversy is an action of ejectment in a court in the exercise exclusively of common law jurisdiction, and in such action and court the legal title must prevail.

2d. The patent under which the plaintiff claims, confers upon him

a legal title; not the less so from the recital in it as to the mode or manner in which the grantee had gone into possession.

3d. The nature and character of the title of the defendants will be developed by the instructions which will follow, but I now charge you, that if it is even deemed that the defendants have an inchoate and equitable title, whatever be that right, if only equitable, which they may render available in a court of equity, and which would authorize a confirmation by the courts under the act of Congress of 3d March, 1851, it cannot be set up in this action, in this court, against the plaintiff's patent.

4th. The transcript of the record from the District Court of the Northern District of California, which has been offered in evidence, duly certified, shows that upon application made under the act of Congress passed 3d of March, 1851, the claim under which defendant's alleged title has been confirmed, and nothing more to prove title in this case, against the title of the plaintiff.

5th. Such confirmation, without any survey or segregation of the land under it, and the appeal still pending from the decision of the District Court, does not constitute a legal title, which in this case and court can be set up against the title held by the plaintiff under the patent.

6th. The testimony of the witnesses Wallace and Ryland, and any other witnesses, to prove fraud collaterally in this case, in the obtainment of the grant, and thus assail the validity of the patent, the admissibility of which, by consent of parties, was reserved for the decision of the court, must be excluded from your consideration in your action on this case, being inadmissible and incompetent.

7th. I shall now instruct you upon those principles of law which you must carry with you when you come to pass upon the facts more immediately connected with the title set up by the defendants in defence.

Such of the instructions asked by the plaintiff which correctly set forth the law which must control this case, or this portion of it, will now be given you in charge.

That the jury must be satisfied that the boundaries claimed by the defendants as the boundaries of the pueblo of San Jose were actually assigned or granted to said pueblo, by competent Mexican authority, in order to find such boundary established.

That in proving a claim of title to lands, a pueblo, as any other claimant, must establish, by competent legal testimony, a legal title, either by concession, grant, or assignment of boundaries by way of grant; that is to say, that when such assignment of boundaries was made by the granting power, it was done with the intention to vest in the pueblo not the mere right to the use, but the full proprietorship of the land.

That the authorities of San Jose had no more inherent legal right

to establish the boundaries of their pueblo, than had any other applicant to the government for a grant of a tract of land.

That the proceedings of the commissioners of 1837–8, making out the claimed boundaries, were not sufficient to *establish* these boundaries until ratified and confirmed by the supreme authorities, and that they were, until such confirmation, merely in the nature of a commission of inquiry.

That the pueblos of California, and among them that of San Jose, held their common lands, that is the lands outside of their actual settlement, and also outside of their solares, suertes, and propios, by a mere usufructuary tenure, and not by title in full proprietorship.

That if the jury find that the lands described in the complaint are part of the common lands of the former pueblo of San Jose (bearing in mind the meaning of the term common lands, as explained in the last instruction), then the defendants in this case have not established that said pueblo had such a legal title to said common lands as to enable them to resist a claim made under a patent from the United States government, deraigned by proper mesne conveyances from the patentee to plaintiff.

That so much of section fourteen (14) of the Act of Congress, entitled "An Act to ascertain and settle Private Land Claims in the State of California," as says "the provisions of this act shall not extend to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town, to which lands may have granted for the establishment of a town by the Spanish or Mexican government or the lawful authorities thereof," do not apply to the land granted to Chaboya recited in said patent.

That unless the jury should find that the land embraced within the patent to Chaboya constituted a city or town or village lot, which city, town, or village existed on the seventh of July, 1846, or at the time the Act of March 3, 1851, was passed, then there is no grant of said Chaboya land to the pueblo of San Jose or the city of San Jose, by the 14th section of the Act of 3d March, 1851.

That the tenure by which the pueblos of California, including San Jose, held their common lands, being merely usufructuary and not proprietary, no right by prescription could arise in favor of the pueblo of San Jose to her common lands by lapse of time.

In relation to the instructions asked by defendants, they are based upon principles so directly in conflict with those this court has given you in charge that it is impracticable that both can be right. All that this court can do is to disallow the latter, leaving the defendants to pursue their right of appeal to a higher tribunal, to correct any error this court has committed, if they should decide that it exists."

To each and every part of which the defendants excepted at the time.

Wherefore, the defendants pray, that this their bill of exceptions be signed, sealed, and enrolled, which is done.

Dated at San Francisco, this 11th day of April, 1860.

M. HALL McALLISTER, [SEAL.]
Judge Circuit Court U. S., District of California.

And afterwards, to wit, on the seventh day of March, in the year one thousand eight hundred and sixty, upon the prayer of the defendants, the following writ of error was duly issued in this cause, in the words following, to wit:

Writ of Error.

United States of America, *ss.*

The President of the United States of America, to the Judges of the Circuit Court of the United States for the California Districts, greeting:

Because in the record, proceedings, as also in the rendition of a judgment on the 2d day of March, 1860, in a plea lately pending before you, between Gustave Touchard, plaintiff, against Mickle McWelch and Trume Andrews, and against James Singleton, Daniel McCray, William Quin, John A. Cottle, John Tully, Oliver Farnsworth, Robert Thompson, Joseph Aubrey, Peter McChristal, George Hellyer, John W. Herndon, Edmund Ladd, Orval B. Cottle, John Hassler, and Henrietta Bollman, and against John Patterson and Benjamin Patterson, defendants, a manifest error hath happened, to the great damage of the said defendants therein last named, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded that if the judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 7th day of March, A.D. 1860, of the December Term, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States the eighty-fourth year.

In testimony whereof, the clerk of the said Circuit Court hath hereunto subscribed his name, and affixed the seal of the [SEAL.] said United States Circuit Court, on this seventh day of March, A.D. 1860.

Attest, CUTLER McALLISTER,
Clerk.

The writ of error allowed.

M. HALL McALLISTER,
Judge Circuit Court U. S., District of California.

A true copy. [SEAL.]

CUTLER McALLISTER,
Clerk Circuit Court U. S., District of California.

Copy of a writ of error lodged in pursuance of the statute of the United States in such case made and provided, for the above-named Gustave Touchard, defendant in error.

CROCKETT & CRITTENDEN,
Att'ys for Plaintiff in Error.

Indorsed: Filed March 7th, 1860. Cutler McAllister, clerk.

And afterwards, to wit, on the same day, and in the year last aforesaid, the following citation upon the aforesaid writ of error was duly issued by the judge of said court, in the words following, that is to say:

Citation.

United States of America, *ss.*

To Gustave Touchard, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the United States Circuit Court of the California districts, northern district, wherein Mickle McWelch, Trume Andrews, James Singleton, Daniel McCray, William Quinn, John A. Cottle, John Tully, Oliver Farnsworth, Robert Thompson, Joseph Aubrey, Peter McChristal, George Hellyer, John W. Herndon, Edmund Ladd, Orval B. Cottle, John Hassler, Henrietta Bollman, John Patterson, and Benjamin Patterson, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable M. Hall McAllister, judge of United States Circuit Court for the California districts, this seventh day of March, A.D. 1860.

M. HALL McALLISTER, [SEAL.]
Judge C. C. U. S.

CUTLER McALLISTER,
Clerk Cir. Ct. U. S. Dist. of Cal.

U. S. MARSHAL'S OFFICE, SAN FRANCISCO, March 10, 1860.

I hereby certify that I received the within citation on writ of error, on the 7th day of March, 1860, and personally served the same by copy, on the 9th day of March, 1860, on Gustave Touchard, in the city of San Francisco, and at the same time exhibiting the original citation in writ of error in this cause.

P. L. SOLOMON,
U. S. Marshal.
By S. LAMKIN,
Deputy.

Indorsed: Filed March 10, 1860.

C. McALLISTER,
Clerk.

Clerk's Certificate.

I, Cutler McAllister, clerk of the Circuit Court of the United States for the districts of California, do hereby certify that the foregoing and hereunto annexed pages, numbered from 1 to 607, both inclusive, contain a full, true and correct transcript of the record of proceedings in the case entitled

GUSTAVE TOUCHARD, plaintiff,
v.
JAMES SINGLETON et al., defendants.

Now on file in this office, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this thirtieth day of June, one thousand eight hundred and sixty, and of our Independence the 84th.

[SEAL.]

CUTLER McALLISTER,
Clerk.

United States of America, *ss.*

The President of the United States of America, to the Judges of the Circuit Court of the United States for the California Districts, Northern District, greeting:

Because in the record proceedings, as also in the rendition of a judgment, on the 2d day of March, 1860, in a plea lately pending before you, between Gustave Touchard, plaintiff, against Mickle McWelch and Trume Andrews, and against James Singleton, Daniel McCray, William Quinn, John A. Cottle, John Tully, Oliver Farnsworth, Robert Thompson, Joseph Aubrey, Peter McChristal, George Hellyer, John W. Herndon, Edmund Ladd, Orval B. Cottle, John Hassler, and Henrietta Bollman, and against John Patterson and Benjamin Patterson, defendants, a manifest error hath happened, to the great damage of the said defendants therein last named, as by

their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf,

You are hereby commanded that if the judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 7th day of March, A.D. 1860, of the December term, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States the eighty-fourth year.

In testimony whereof, the clerk of the said Circuit Court, hath hereunto subscribed his name and affixed the seal of the said United States Circuit Court, on this seventh day of March, A.D. 1860.

[SEAL.]

Attest, CUTLER McALLISTER,
Clerk.

The within writ of error allowed.

M. HALL McALLISTER,
Judge Cir. Ct. U. S. Dist. of Cal.

1493

Supreme Court of the United States.

No. 184.

JAMES SINGLETON and others,

PLAINTIFFS IN ERROR,

vs.

GUSTAVE TOUCHARD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DIST. OF CALIFORNIA.

Brief on behalf of Defendants in Error.

King & Baird, Printers, No. 607 Sansom Street, Philadelphia.

Supreme Court of the United States.
No. 184.

JAMES SINGLETON and others, Plaintiffs in Error, *vs.* GUSTAVE TOUCHARD.	*In Error to the Circuit Court of the United States for the Northern District of California.*

This Writ of Error was brought here upon a judgment for the Plaintiff below, who is Defendant in Error, in an action of ejectment.

As the record is voluminous, we will present an abstract, as brief as the nature of the case will allow, of the pleadings and proceedings in the case, and also of all the evidence produced and offered on each side, before considering the prayers for instructions, and the charge of the court.

Pleadings and Proceedings.

The action was commenced by a complaint, according to the practice of the State and Federal courts in California, for the possession of a tract of land situated in the county of Santa Clara, in the State of California, being a portion of the rancho known by the name of Yerba Buena rancho.—Record, page 2.

All the defendants below, except Mickle McWelch and Trume Andrews, admitted in their answers their separate occupation at the time of the commencement of the suit of the portions of the land described in the complaint, which were set out in their answers.

All the defendants in their answers set up a title in fee to the land in controversy at the time of the commencement of the suit:

First. In the commissioners of the funded debt of the city of San Jose, from whom all, except McWelch and Andrews,

claimed to have since received conveyances for the several portions occupied by them respectively.

Second In the Mayor and Common Council of the city of San Jose; and all except Andrews claimed to be in possession by their license and consent.

Third. In Isaac Branham and William L. Smith, in their own right, and as trustees for Josiah Belden and others.—Record, pages 5 to 48.

Replications to the answers, in conformity with the practice of the Circuit Court for California, were filed by the plaintiff below.—Record, pages 49 to 74.

A verdict was rendered for the plaintiff below, against Andrews and McWelch generally, and against the other defendants, for the tracts of land of which they admitted in their answers they were in possession, and judgment was entered accordingly.—Record, pages 76 to 84.

Evidence Produced and Offered.

The Court will perceive that all the evidence produced or offered on either side, is detailed in the statement of it given in the writ of error, (see Record, page 222,) where, after the statement of the evidence, it is said "This was all the evidence in the cause."

The following is a full abstract of all the evidence produced and offered on both sides, as given in full in the statement in the writ of error.

The plaintiff below, at the trial, produced in evidence a patent from the United States to Antonio Chaboya, issued prior to the commencement of the suit, which, it was admitted, embraced the land in controversy in this cause, and mesne conveyances from the patentee to the plaintiff below, "which it was admitted had the effect to vest in the plaintiff, prior to the commencement of this suit, all the right, title and interest of the said patentee, whether derived from the said patent or otherwise, in and to the lands described in the complaint."

The plaintiff also proved that the defendants, McWelch and Andrews, at the commencement of the suit, occupied portions of the land described in the complaint and then rested.—See Record, pages 85 to 88.

The defendants below then produced in evidence the petition of the Mayor and Common Council of the city of San Jose, for the confirmation to them of a tract of land, being "the commons or pasture lands" of the Pueblo of San Jose, and also the orders of the United States Land Commissioners for the adjudication of private land claims in California, and of the District Court, including a decree of the Land Commissioners confirming four leagues, being one league in each direction from the centre of the plaza of the city of San Jose, and rejecting the claim as to the rest of the land claimed; and also including the decree of the District Court confirming to the petitioners the entire tract of land claimed by them, which, the defendants proved, embraced the land described in the complaint.—Record, pages 88 to 99.

The defendants, then put in evidence certain documents from the archives of the former Spanish and Mexican Governments.

1st. A letter from El Rd. Helo Barclay y Ursula to Señor Don Phillip Neve, dated Mexico, July 22, 1778, acknowledging the receipt of Neve's communication informing him of the founding of the Pueblo of San Jose.—Record, pages 99 and 100.

2d. A letter from Galinda Navarro to the Commanding General, dated Chihuahua, 27th of October, 1785. Navarro says that by the New Regulations the new founders of Pueblos in California "shall enjoy in common the use of the waters, pastures, wood and timber of the commons, the groves and pastures covered with timber, which in accordance with law are to be marked off to each Pueblo."

He then says that the land to be assigned to a Pueblo shall be *four leagues* of territory, and that the Commanding General is authorized, if he deems proper, to grant and order that instructions be sent to the Governor of California, Don

Pedro Fages, to have marked out immediately to each new Pueblo, to the extent of *four leagues*, with the proper survey and monuments And adds, that "as regards the land lying without the said limits and district assigned to each Pueblo, tracts (sitios) may be granted or leased for farms (estancias) for the raising of cattle," and further says, that "notwithstanding the leases and grants, the pastures shall remain for the common use and benefit."—Record, pages 100 to 102.

3d. A communication from De Croix and Borilla, dated Pueblo de Nombrado Deres, July 19, 1779.—Record page 102.

4th. A communication from Joseph de Galvez, dated El Pardo, March 6th, 1779.—Record, page 102.

5th. A communication from De Croix, dated Arispe, December 17, 1779.—Record, pages 102 to 104.

6th. A communication from De Croix, dated Arispe, February 9th, 1786.—Record, pages 104 and 105.

7th. A communication from De Croix, dated Arispe, February 10, 1780.—Record, pages 105 and 106.

(The five last mentioned documents were introduced to show the founding of the Pueblo of San Jose, and the approval of its foundation by the King. But there is no mention made in any of them of any grant of land to the Pueblo, nor of the extent and boundaries of the Pueblo.)

8th. A communication from Margarita, dated Loretto, October 30, 1800, stating that he had decreed that the river Guadelupe should be the boundary between the Pueblo of San Jose and the Mission of Santa Clara.

9th. A document signed by Josef Arguello, Captain and commander of the Presidio of San Francisco, dated Santa Clara, July 24th, 1801, certifying that he had, in the presence of the representatives of the Pueblo of San Jose and the Mission of Santa Clara, established the line of division between them, being the river Guadelupe.—Record, page 107.

10th. A communication from Ignacio Vallejo, about building houses for the Pueblo on the Mission side of the river, on account of floods.—Record, page 108.

11th. A communication from Jose M. Estudillo, dated Monterey, September 20, 1809, about a dispute between the Mission of Santa Clara and the Pueblo of San Jose, on account of the cattle of the Mission ranging on a place called Calaveras.—Record, pages 108 to 110.

12th. A communication from the Viceroy Arcenzo to the Governor of California, dated Mexico, August 7, 1798, requiring him to examine into the alleged inconvenience arising from the Pueblo of San Jose being too near the Mission of Santa Clara.—Record, pages 110 and 111.

13th. A copy of representation of Guardian of San Fernando, complaining of the assignment of boundaries to the Pueblo of San Jose, made by Don Pedro Fages, Governor of California in 1782, as being prejudicial to the Mission of Santa Clara.—Record, pages 111 to 114.

14th. Two communications from Governor Banco to the Viceroy concerning the dispute between the Pueblo of San Jose and the Mission of Santa Clara, showing that Governor Fages obeyed instructions in establishing the boundary line between the Pueblo and Mission, but recommending that the river should be declared the boundary line between them.—Record, pages 114, 116.

15th. A communication from Raymundo Carillo to Governor Arrillaga, dated Monterey, August 1st, 1801, in relation to the fixing of the limits between the Pueblo of San Jose and the Mission of Santa Clara.—Record, page 117.

16th. A communication from Governor Arrillaga, dated San Zavier, August 16th, 1803, enclosing a letter from Arrillaga to the Minister of the Mission of San Jose, annulling a sale of a place called La Calera, made by A. Larios to the Mission of San Jose, because it was made without the knowledge and consent of the Government, and

because the authorities of the Pueblo were soliciting the same place.—Record, pages 117 and 118.

17th. A communication from the Prefect of the First District, Villara, dated San Juan de Castro, July 20, 1840, addressed to the Secretary of State, Jimero, acknowledging a note from Jimero, ordering that there shall not be adjudicated to one individual alone the Canada de Los Capitancillos, the same being common lands of the Pueblo of San Jose.

18th. A document (admitted under objection by the plaintiff below) found in the Mexican archives, in an unbound book, dated 1828 in the title page. This document purports to be a recognition of the land of the Pueblo of San Jose, according to the (informe) official inquiry of the Alcalde Mariano Castro, and gives two boundary lines, one on the northwest, and the other on the southeast.—Record, page 119.

19th. A document dated 1837, endorsed an "Expediente "moved by the Illustrous Ayuntamiento of San Jose, peti- "tioning for the marking out of limits for the legal endow- "ment of said people."

The expediente begins with a petition to the Alcalde, signed by Thomas Pacheco in behalf of certain citizens.

It states that certain persons are about to be put in possession of the tracts of land which, in the opinion of the citizens, were the common property of the inhabitants of the Pueblo, asks to suspend, if possible, said acts of possession, until, in the meantime, the regulation is complied with, which requires a map of the circumjacent land belonging to the Pueblos; and asks to have the matter submitted to the Governor.—Record, page 121.

Juan Alvirez, to whom the petition is presented, recommends to the Governor the marking out of land for the common use, and asks him to indicate provisionally the boundaries of a Pueblo, when he will "proceed to locate the "grants and give the possession of the same."—Record, pages 121 and 122.

The Governor, Juan B. Alvarado, replies, "I return to "you the accompanying documents, in order that when they

"shall have been handed to the Ayuntamiento, this body "may appoint a commission of its own members or of other "persons, for the purpose of making a plan or map of the "lands that are to be laid out for the legal endowment of the "town. When these prescribed formalities shall have been "complied with, return this expediente for the decision of "the Government."—Record, page 122.

Guillermo Castro, Guillermo Gulnac and Salvio Pacheco were accordingly appointed Commissioners, and Salvio Pacheco was appointed Secretary to the Commission.—Record, pages 122 and 123.

At the first session Commissioner Guillermo Castro made the following proposition.—Record, pages 124 and 125.

"That the proper limits of this poblacion should be recog-"nized to be the identical land marks marked out, and which "were in old times known as such by the old colonists (pobla-"dores) and given by the proper authorities to us." (Being, no doubt, the Fages assignment of boundaries to the Pueblo of San Jose and their modification as between the Pueblo and the Mission of Santa Clara.) "And moreover, as it is well "known that only on the northwest by west and to the head "waters of the river Guadelupe northwest by west have been "indicated by monuments, but for want of knowing the land "marks on other points of the compass, it appears to be "necessary to agree for these reasons (recognized as other "points were, as has been stated) that we should then "declare how many varas or sitios should properly be recog-"nized as the reservation (propios) and common for the "neighboring (ejidos)," &c.

Whereupon Mr. Guillermo Gulnac, taking the floor, added that "they should leave to the decision of the Government "the number of varas of land that as Pueblo it is entitled, "and that they should merely draw the surveys in order to "give with precision a just system of lines and boundaries, "recognizing distinctly the Arroyo de Los Llagos as a land "mark well known for this part of the land."—Record, page 124.

At the second session, Guillermo Castro took the floor, Record, page 124, and said that "in relation to the

"recognition of such a quantity of land as was embraced by "the eye up to the point of los Llagos, as has been proposed, "there may be found in this part, within this circuit or inter- "mediate space, some of the neighbors who having already "had the loan of the land from the Ayuntamiento, have "recently obtained the gift of proprietorship in the same; it "would seem inconvenient, for these reasons, that those "lands should be embraced in the survey, and that the "parties interested might allege the right of ownership."

Salvio Pacheco then proposed that "the right of proprie- "torship or possession should be excercised according to law "and without prejudice to the Pueblo or corporation as "pointed out by the tenth article of the colonization law." He then spoke of the denouncement or complaint which annuls the possession, and of the right of reclamation in case of being regulated, at the time of making the grant, and also that private lands, within the Commons of the Pueblo, are subject to the custom of the community, which subjects them to the tax and concluded by saying, "wherefore after the "survey of the land, as has been proposed, the Government "will decide these matters in accordance with the rights of "proprietorship, and all that is contained in the decrees, the "right of the Pueblo to allege whatever she considers in (if "she does not approve of it) remaining intact." Record, pages 124 and 125.

"All the aforesaid propositions were, after much discussion, approved." The Commissioners then made a survey and also a map of the land claimed, and remitted them to the Ayuntamiento Town Council. Record, pages 125 to 127.

There is no approval by the Governor of either the survey or map. This was indispensable, as the Governor had not delegated to the Commissioners his power of regulating the boundaries. On the contrary, he says, "return this expediente for the decision of the Government." It is to be observed also that he made no provisional decree that the Pueblo was to be preserved in the possession while the proceedings were going on.

The defendant then introduced Guillermo Castro, who

proved the genuineness of the signatures to the above expediente of 1837, and testified, Record, pages 127 and 128, "that witness was one of the commissioners named therein; "that in ascertaining the boundaries of the Pueblo, the com- "missioners enquired of the old inhabitants of the Pueblo, "and they informed the commissioners what were the ancient "boundaries, to wit: The Las Llogas, the rancho of Higuera, "the Guadalupe River, and the summit of the Sierra on the "east. The commissioners were informed by the these old "people, that long before then, there had been some contes- "tation between the Mission of Santa Clara and the Pueblo, "about the dividing line; that in the old time it was sup- "posed the line ran from the Mission of San Jose to the "gap of the Santa Cruz mountains, *but as the lands were "settled and occupied, the boundaries were contracted*, that "nothing was known about title, but only the boundaries; "that in making the survey, they found at the head waters "of the Guadalupe a monument of stones, and at the hill of "the Capitancillos another monument of a similar kind; saw "monuments only at the places named."

After describing the mode of making the survey, the witness, Castro, proceeds: "The custom from the time witness first went to the Pueblo was for the Mission of Santa Clara to hold "rodeos" (gatherings of cattle in order to allow the neighbors to select out theirs) outside the limits above described, and on the Mission side of the Guadalupe, and for the inhabitants of the Pueblo to hold rodeos within the limits aforesaid. These were considered the rodeo limits of the Pueblo. That in old times the creek, between the Mission of San Jose and Higuera's house, was the boundary on the north before the Pueblo lands were needed for settlement; *but as the lands were disposed of, the Pueblo limits became narrower.* There was an officer in the Pueblo called "judge of the plains," who gave notice of and superintended the "rodeos."

In early times it was customary to hold "rodeos" every eight days in the Pueblo. The limits of the Pueblo "rodeos" were formerly those described; *afterwards the rodeos of the Pueblo had to remove their boundaries, because the Gover-*

nor made grants of its lands, and the Pueblo had to come within those grants."

On his cross-examination, he testified that the commissioners found only two boundaries, one on the hill, the other at the source of the Arroyo Guadalupe, and they fixed the boundaries as shown in the expediente, and made the map annexed to it, because it was thought best to do so, and to forward it to the Government, so that it might decide whether or not the Pueblo was to have the lands embraced in the boundaries.

The defendants below then introduced in evidence deposition of Mariano Castro—Record pages, 128, 129, 130, taken before the United States Land Commissioners, in the case No. 287 in behalf of Charles White and Isaac Branham, who had then testified, "that the Pueblo had lands and had them ever since the settlement and foundation of the town; *did not know whether the boundaries of the Pueblo were ever run off or marked;* mentioned some marks or monuments showing the bounds of the Pueblo lands of San Jose when he first knew them.

"That the Government of Spain gave the lands to the "Pueblo, and they laid it off and put their land marks; that "the Pueblo has not sold any lands, because they could not "sell it; they have not rented it, because they have granted "it by order of the Government to the inhabitants for settle-"ment and cultivation."

The defendants in error then introduced James W. Weeks as a witness who testified—Record pages, 130 and 131,—that he knew most of the old inhabitants of the Pueblo of San Jose, and among them William Gulnac, the Commissioner named in the expediente of 1837; that he (Weeks) often talked with the old inhabitants about the boundary of the Pueblo of San Jose, and after describing the boundaries of the Pueblo lands of the Pueblo of San Jose, he added, that "these were the boundaries fixed by Gulnac, Castro and the other Commissioners." The witness mentioned the limits of the rodeos of the Pueblo where the cattle of the inhabitants pastured in common, and stated that the "inhabitants of the

"Pueblo owned their cattle separately, and each had his own "brand and branding iron."

The defendants below then introduced Thomas Campbell as a witness, who testified—Record pages 131, and 132,—that William Gulnac pointed out to him some of the boundaries of the Pueblo lands, that Gulnac pointed out, as a corner, a white place in the side of the mountain on the east side of the valley, and east of the embarcadero; that Gulnac said there was a pile of stones near this spot which marked out one of the corners of said boundaries. The witness said Gulnac also pointed out to him the boundary line between the Pueblo of San Jose and the Mission of Santa Clara, and the witnesses said he had seen a pile of stones which he had often heard was on the boundary line.

That this line continued to the creek called Llogas, about twenty-three miles south of the town of San Jose, and thence across the east side of the valley, and thence northward to the point of beginning; that these were the boundaries described by Gulnac, who was dead, and he has heard many persons in the Pueblo speak of these as the original boundaries, (whether they are living or dead he did not say), he further testified that he knew the land in controversy in this suit, and that it is in the limits of the Pueblo lands above described.

We here call the attention of the Court to the vagueness of this description of the Pueblo lands in the two last lines attempted to be described, and also to the fact that this is the only witness who testified that the land in controversy in this suit is included in the Pueblo lands, He says, it is included in the Pueblo lands according to his description of them.

The defendants below then introduced Juan Galinda as witness who testified, record page 132, that he has heard it "said that Pueblo lands extended from the Llogas to the Ca- "lera; *but never heard of any proclamation setting them* "*apart;* the river Guadelupe was said to be the boundary on "the west, and the summit of the mountains on the east. "Whenever a proclamation was sent by the Government, it "was usual to notify the people of it. Witness heard of the

"boundaries above described as those of the Pueblo lands be-
"fore he joined the army (in 1801). The lands within these
"limits were occupied by the inhabitants of the Pueblo in
"common, from the time witness first went to the Pueblo,
"up to the year 1830. Witness only knows of one monu-
"ment to mark the boundaries, and that was a monument of
"stones to mark the dividing line between the mission of
"Santa Clara and the Pueblo."

The defendants below then offered in evidence the transcript of the proceedings in the case of Antonio Chaboya *vs.* The United States, see Record pages 133 to 185, being the proceedings on which the patent given in evidence was founded, with a view to show that a grant from Juan B. Alvarado, Governor of California, to said Chaboya was fraudulent, the Court excluded said transcript.

There is no mention in the patent of any grant from Alvarado to Chaboya. The only title mentioned in the patent being a decree from Don Jose Figueroa, dated November 25th, 1833, see Record, page 85.

The defendants in error, then produced C. T. Ryland, and W. T. Wallace as witnesses, and offered to prove by them, Record pages 185 and 186, that they were, as attorneys at law, employed by the Patentee, Antonio Chaboya, to prosecute before the Board of United States Land Commissioners, his claim to the land embraced in the patent under a recorded contract, that they examined the papers on file in said cause, then pending before said Commissioners; that on such examination they found no grant or decree on file to said Chaboya for said lands, except a decree from Governor Figueroa, and a map or *deseno*, accompanying the same; and never heard of a grant from Governor Alvarado to Chaboya for said lands, until about the time the said cause was decided by the Land Commissioners.

The defendant in error then offered to prove by S. O. Houghton, Record page 186, a conversation between him and Chaboya, at the office of Wallace and Ryland, in regard to his title to the land being not a grant but a permission to occupy.

The defendant in error then offered to prove by P. O. Minor,

Record page 186, Chaboya had told him in conversation, that he claimed only one league.

The defendant in error then offered in evidence a paper, Record, pages 186 and 187, purporting, but not proved, to be a copy of the written contract between said Chaboya and Wallace, and Ryland, by which Chaboya sells to Wallace and Ryland the one-third of the Rancho Yerba Buena, being the same which was granted by Governor Figueroa, to said party of the first part (Chaboya), about the year 1832, in consideration of one dollar, and the agreement made by said William T. Wallace and C. T. Ryland, as attorneys at law, that they will attend to the claim for the land then pending.

This document was ruled out, because incompetent evidence, and also, because, no foundation had been laid for the introduction of said copy in evidence.

The defendants then offered in evidence a copy of a pre-emption claim of Antonio Chaboya, for 160 acres, Record, pages 188, 189, and at the same time offered to prove that the 160 acres is part of the lands in controversy in this suit.

The Court excluded it as incompetent, the defendants then produced evidence oral and documentary, Record pages 189 to 213, to show that, by various acts of the Legislature of California and deeds of conveyance, the City of San Jose had succeeded to the Pueblo, as claimant, to the lands claimed for the Pueblo, and that the defendants, except McWelch and Andrews, had received conveyances for the respective tracts they occupied from the City through the Fund Commissioners.

The defendants below then rested, and the plaintiff, in rebuttal, introduced C. T. Healy, county surveyor of Santa Clara county, where the lands lie, who testified, (Record, page 214,) that the limits of the city of San Jose are now as they were fixed by the original Act of Corporation in 1850, and that none of the lands described in the patent given in evidence are within the corporate limits of said city; that from the centre of the city of San Jose to the nearest point of land embraced by the patent given in evidence, was about three miles, (a Spanish league is two miles and five-eighths of a mile, as ascertained and established by the General Land Office,) and to the farthest point about ten miles; that the

boundaries of the Pueblo lands, as described in the expediente of 1837–8, embraced from one hundred and thirty to one hundred and fifty acres—about ~~eight or nine~~ 30 or 35 leagues.

The plaintiff in error then put in evidence a document (Record page 214), being a statement which shows the allotments of land distributed to the settlers of the Pueblo of San Jose, and a diagram of them.

This document consists of an order, dated Monterey, October 24, 1782, from Don Pedro Fages, Governor of California, to Don Jose Moraga, Commandant of the Presidio of San Francisco, (Record, pages 214 and 215,) ordering him in the name of the King to give possession of the suertes (sowing lands) and solares (house lots) which are destined for them, proceeding by formal acts, &c. Then follows a certificate, dated May 13, 1783 (Record, page 215), signed by Jose Moraga, the commandant, and Basquez Topia and Peralta, that possession, with the required formalities, had been givne to the Alcalde Ignacia Archetula, and the other settlers of the suertes (sowing lands) and solaras (house lots) to which they were entitled, and that there had been a designation of Ejido (commons) and setting apart of suertes of land for propios (land for maintaining the Pueblo.)

Then follows (Record, page 216) a certificate dated 17th of May, 1783, signed by Jose Moraga, the commandant, and by Basquez Topia and Peralta as witnesses, which designate the land for propios, and then says the remainder is to be considered royal land (realengo) with all the rest of the land which is not comprehended in the portions of which possession has been given to settlers, and for ejidos (commons) of said Pueblo there is designated all the fifteen hundred varas in length and seven hundred in breadth. The certificate continues "with all of which I made them fully acquainted and "they unanimously said that they understood as well what "belonged to their respective possessions, as what was pro-"pios of the pueblo, and what royal land."

Then follows, Record pages 216 and 217, the formal act of possession to Archetula and to the other probladors (settlers). This measurement of land was approved by Governor Fages. See defendants evidence above mentioned copy of representa-

tion of Guardian of San Fernando, Record pages 111 to 114. "It was admitted that the lands embraced in this document, "and set apart by Moraga for the use of the inhabitants of "said Pueblo, do not include any portion of the lands em- "braced in the patent of Chaboya." Record page, 217.

The plaintiff below then read in evidence a notice and order of the District Court, granting an appeal to the Supreme Court in the case of the United States *vs.* Mayor and Common Council of San Jose for Pueblo lands.

The plaintiff below then called R. C. Hopkins, in charge of the Spanish and Mexican Archives in the office of the United States Surveyor General for Callfornia, who testified —Record 219—that the expediente of 1837 of the Pueblo of San Jose was not numbered by Jimeno, in his index; there was a skip of the index from number 329 to 340; that the number 339 on the expediente is not original, but was put there by De Zaldo, at one time a clerk in the office of the Surveyor General, and who had charge of the Archives.

On *cross-examination*, the defendant's counsel inquired of the witness if said index contained any reference to a grant from Governor Alvarado to Antonio Chaboya. The plaintiff objected, and the Court sustained the objection, and the defendants excepted.

The plaintiff below then put in evidence a document from the Archives of the Pueblo of San Jose—Record page 219 to 221—being a plan of ways and means for municipal funds of the corporations of the territory of Upper California.

The First article orders that the corporations shall proceed by the customary methods to solicit that there be laid out to each Pueblo lands for commons and *property.*"

Article Second directs that *the lands of property* which may be apportioned to each Pueblo, shall be sub-divided into moderate and small portions, and may be rented or sold at once at public auctions. Actual possessors to pay a yearly tax.

Article Third fixes the price of lots for habitations.

The other Articles relate to branding irons and taxes.

The plaintiff below then introduced Juan B. Alvarado, as witness, who testified—Record page 222,—that he is the

same Alvarado who issued the order contained in the expediente of 1837, directing the Ayuntamiento of San Jose to appoint a commission to ascertain and report upon the boundaries of said Pueblo lands. That he received from the Secretary's office the report of said Commissioners, and it "went into form," that is, it became the basis of an expediente instruction, which, when complete, was to be forwarded to the Departmental Assembly, and this had to be done before the Assembly could pass upon a petition for assignment of "Ejidos," that nothing was done after this with the expediente. It remained in suspense in the office. The Governor did nothing at all in reference to it; it never was presented to the Departmental Assembly. That Jimeno was Secretary of State from 1839 to 1842.

The statement of the evidence in the record concludes thus—"*This was all the evidence in the cause.*" Record page 222.

Prayers for Instructions, and Charge of the Court.

The defendants below asked for certain Instructions to the jury, which were refused by the Court, and the defendants excepted, whereupon the plaintiff below asked for certain instructions which were given, and the defendants excepted. —Record pages 222 to 226.

The Court then charged the Jury on certain points, and, in the charge—Record pages 226 to 228—gave to the jury the instructions asked for by the plaintiff, saying, "Such of "the instructions asked for by the plaintiff which correctly set "forth the law which must control this case, or this portion "of it, will now be given you in charge," which instructions were then set forth at length in the charge. The charge closes thus: "In relation to the instructions asked by de-"fendants, they are based upon principles so directly in "conflict with those this Court has given you in charge, "that it is impracticable that both can be right. All that

"this Court can do, is to disallow the latter, leaving the "defendants to pursue their right of appeal to a higher "tribunal, to correct any error this Court has committed, if "they should decide that it exists." The defendants excepted to the charge, but as we conceive not in conformity with the fourth rule of this Court, which is in these words, "Hereafter the Judges of the Circuit and District Court shall "not allow any bill of exceptions, which shall contain the "charge of the Court at large to the jury in trials at com- "mon law, *upon any general exception to the whole of such "charge.* But the party excepting shall be required to state "distinctly the several matters of law, in such charge, to "which 'he excepts,' and such matters of law, and those only "shall be inserted in the bill of exceptions, and allowed by "the Court."

The object of this rule manifestly is, to require the party seeking to avail himself of any legal principle, operating as he supposes in his favor, to draw the attention of the Court directly to it, and to obtain its direct answer thereto. Thus obviating the unfair advantage often attempted to be taken by plaintiffs in error of general expressions used in a charge expressed at length, which would have been qualified or modified as the facts of the case would seem to require, had the attention of the Court been called specifically to the legal rulings complained of.

By the express terms of the above rule, the Court below was *required* to refuse to allow any such bill of exceptions as that taken in this instance to the charge at large; the language of the rule being, that the Courts "*shall not allow*" such bill of exceptions.

This Court, therefore, can carry out its rule only by treating such a bill of exceptions as a nulity, even if allowed by the Court below. The rule is one made, not for the convenience of the inferior courts, to be enforced or dispensed with by them, at their pleasure. It is a rule intended to enforce the execution of justice, and to prevent the reversal of judgments rendered after a trial upon the merits on errors artfully extracted from the generalizations of a charge at length. Reversing judgments on such grounds has been

found by experienced Judges of Courts of Error to be a source of numerous delays, and thus leading to cruel injustice. Hence the fourth rule of this Court, which, by requiring specific and precise exceptions to specific and precise rulings obviates the evils flowing from general exceptions to a charge at length. This Court, in order to carry its rule into effective operation, will treat all such general exceptions as nullities; otherwise, one of its most wholesome regulations becomes nullified by the neglect or indifference of an inferior court; and the Judges of this Court will be forced to wade through masses of confused and ill-digested facts in order to arrive at the true legal principles on which a case depends; instead of those principles being submitted to them clearly, simply and perspicuously.

We submit to the Court that, if it appears from the Record, that the refusal to allow the prayers of the defendants for instructions and the allowance of those of the plaintiffs were *by the charge alone*, then this case is to be considered only on the exceptions of the defendants to the exclusion by the Court of the evidence offered by them to show fraud in the proceedings under which the Patent was obtained by Chaboya.

That this evidence was properly excluded is settled. Moore *vs.* Wilkinson, 13th Cal. R. 478; Biddle Boggs *vs.* The Merced Mining Co., 14th Cal. R. 361; Field *vs.* Seabury, 19 Howard, 332.

In the last mentioned case, this Court said, on page 332, "This case involves directly the point *whether*, when a grant "or patent for land, or legislative confirmation of titles to "land, has been given by the sovereignty or legislative "authority only having the right to make it, without any "provision having been made in the patent or by the law to "inquire into its fairness as between the grantor or grantee, "or between third parties, a third party can raise in eject-"ment, the question of fraud as between the grantor and "grantee, and thus look beyond the patent or grant.

"We are not aware that such a proceeding is allowed in "any of the Courts of law. In England, a Bill in Equity "lies to set aside letters patent obtained from the King

"by fraud," (Att'y Gen. vs. Vernon, 277, 370; the same case "2 Ch. Rep. 353,) and it would in the United States; but, it "is a question exclusively between the sovereignty making "the grant and the grantee. But in neither could a patent "be collaterally avoided at law for fraud."

But, if the Court considers the prayers for instructions and the charge as properly before it for discussion, we will offer the following argument to show that the Court below ruled correctly.

Assignment of boundaries for common use.

It will be perceived on reading the prayers for instructions on the part of the defendant below, that they claim that the Pueblo acquired the legal estate to the land in controversy, not by any grant, but by the inhabitants having used it in common.

Not having produced or pretended to any grant of land to the Pueblo, the defendants claim that there was an assignment of boundaries of land for the common use of the inhabitants, which, they say, vested in the Pueblo a legal estate in fee simple.

There is not a shadow of evidence in the Record of any assignment of boundaries to the Pueblo before the Mexican Revolution, in 1821, except that given soon after its foundation by Josè Moraga, under Governor Fages, above referred to, as produced in evidence by the plaintiff below.

This assignment of boundaries did not embrace the lands in controversy, see Record, p. 217, where "it was admitted "that the lands embraced in this document, and set apart by "Moraga for the use of the inhabitants of said Pueblo, do "not include any portion of the lands embraced in the patent "of Chaboya."

The Mission of Santa Clara was dissatisfied with the measurement made by Moraga, under Governor Fages, because it encroached upon the land claimed by the Mission. See Representation of the Guardian of San Fernando,

Record, pages 111 and 112. Whereupon, in order to settle this dispute, a new line was drawn, in 1801, to be the division line between the Mission of Santa Clara and the Pueblo of San Josè, but in no other respect was the assignment of boundaries made by Governor Fages disturbed. With regard to the document purporting to be a recognition of boundaries of the Pueblo in 1828, by the Alcalde Mariano Castro (if it was admissible in evidence), we will remark that it was evidently intended to show what were the boundaries of the Pueblo in the northwest, towards the Mission of San Josè, and on the southeast, towards the Mission of Santa Clara; several disputes having occurred between the Pueblo of San Josè and those two Missions. Record, pages 106 to 118.

We will further remark, that the Alcalde had no authority by law, to fix the boundaries of the Pueblo. Nor was it customary for him to do so. See the Fages' assignment of boundaries, Record, pages 214 to 217, and the Expediente of 1837, Record, pages 121 to 127, where the Governors specially commission persons to make the designation of boundaries.

The last mentioned document (the Expediente of 1837) is conclusive against the theory that there had been any assignment of the boundaries of the Pueblo, other than that of Governor Fages, prior to 1837. The Alcalde Juan Alvirez, in presenting the petition of the citizens, asks the Governor to indicate provisionally what are the boundaries of a Pueblo, and then he will proceed to locate the grants and give possession of the same, (being the acts of giving of possession which the citizens ask him to suspend, the Alcalde being the officer who gave possession of grants under the law of Mexico.) The Governor (Alvarado), in reply to the Alcalde, authorizes the Ayuntamiento to appoint a commission "for "the purpose of making a map or plan of the lands that are "*to be laid out* for the legal endowment of the town, and "adds: When these formalities have been complied with, "*return this Expediente for the decision of the Govern-* "*ment.*" The Commissioner, Castro, in the first session of the Commissioners, after mentioning certain old land marks

(being beyond doubt those marking the division between the Pueblo and Mission of Santa Clara) as the only land marks thereon, says: "they should declare how many *varas* or "*sitios* should be recognized as the reservations (*proprios*) "and commons for the neighboring (*vecinos*)." Commissioner Gulnac then says "that they should leave to the "decision of the Government the number of *varas* (yards) "of land that, as Pueblo, it is entitled," and proposes the "Arroyo de las Llagus, as a land mark well known for this "part of the land." At the next session, Commissioner "Castro said, that in relation to the recognition of such a "quantity of land as was embraced by the eye up to the "Point of las Llagus, *as has been proposed*, there may be "found in this part, within this circuit or intermediate "space, some of the neighbors, who, having already had the "loan of the land from the Ayuntamiento, have recently "obtained the right of proprietorship in the same; it would "seem inconvenient, for these reasons, that these lands "should be embraced in the survey, and that the parties "interested might allege the right of ownership."

The Commissioners finally agreed to the proposition of Salvio Pacheco: "Wherefore, after the survey of the land "as has been proposed, the Government will decide these "matters in accordance with the rights of proprietorship and "all that is contained in the decrees, the right of the Pueblo "to allege whatever she considers in (if she does not "approve of it) remaining intact."

This document (the Expediente of 1837), it will be borne in mind, was produced in evidence by the defendants below. There is no pretence that there was any subsequent attempt to assign boundaries, and the document itself never received the approval of the Government. See the deposition of Juan B. Alvarado, who testified that "it remained in suspense in the office; the Governor did nothing in reference to it."

The testimony of the witnesses produced to make out the claim of the Pueblo, does not make reference to any official marking out of boundaries for the Pueblo, but only speak of such an occupation by the cattle of the inhabitants as would naturally take place, their range being circumscribed only by

the boundaries of the adjoining Missions, until the lands were granted. This is made very clear by reference to the testimony of Guilliermo Castro, above mentioned, pages 9 and 10, and detailed at length, pages 127 and 128, in the Record. He was one of the Commissioners mentioned in the Expediente of 1837. He says that "*as the lands were disposed of, "the Pueblo limits became narrower;*" and lastly, "The "limits of the Pueblo rodeos were formerly those described "afterwards, those of the Pueblo had to remove their boundaries, *because the Governor made grants of its lands, and "the Pueblo and the rodeos to come within those grants.*"

The defendants below produced in evidence a communication from Galindo Navaro, the Viceroy. Record, pages 100 to 102. He states that, according to Law 6th, Title 5, Book of the Recapitulacion, the boundaries assigned to a Pueblo ought to be *four* leagues of territory, either in a square, or elongated, according to the nature of the land; and, therefore, he orders that "instructions be sent to Don Pedro Fages "to have marked out immediately to each new Pueblo, to "the extent of four leagues of land, with the proper survey "and measurement."

That the extent of land to be assigned to a Pueblo were four leagues of land, and no more, is well established, see Opinion in Hart *vs.* Burnett, et al., 15 Cal. Reps., page 542, and also on page 551, in which last place the Court says: "If a "larger tract has been assigned or granted, some act of "grant ought to be shown; or, if the four leagues had been "located in a manner different from the usual form, we might "expect to find some special designation of boundaries." Again, on page 552: "The Mexican laws relating to the "survey of the four square leagues which the laws assigned "to the Pueblo (found in chap 11, 96 of the Ordinanzas de "Sierras y Aguas), are so very plain that there could have "been no possible difficulty in determining the exact boundaries. They are precisely fixed by the law itself."

The defendant below offered no evidence to show that the land in controversy in this suit is included in the four leagues of land to be assigned to Pueblos by law, and their prayers for instructions are all based on the theory of an actual

assignment of boundaries. We therefore submit that the defendants below, having in their writ of error detailed in full all the evidence in the case, and having failed utterly to produce any evidence of any assignment, *by the proper authorities*, of boundaries of land for the Pueblo, that would include the land in controversy, all such of their prayers for instructions as relate to an assignment of boundaries, become purely abstract propositions, having no practical relation to the case, and would have been calculated, if given to the jury, to confuse and mislead them.

The theory of the defendants below that a common use can give any title, legal or equitable, to land, is erroneous, even if we grant for the sake of argument that there was an assignment of boundaries for common use, which included the land in controversy in this suit.

An usufructuary right, by its very terms, supposes the ownership to be in some one else, and can never ripen into a title, until the person having the use renounces it and claims to hold adversely to the owner. The civil law, to which we must refer upon this question, declares[1] that a possession which will found a prescription, must be with the right to dispose of the thing as being masters, or having just cause to believe ourselves to be the right owners, and also that an usufructuary occupation is not such a possession. Domat's Civil Law, book 3, title 7, Possession and Prescription, sec. 1, art. 3 and 14. See also Escriche.

We will also cite on this point De Armas *vs.* The City of New Orleans.

There De Armas claimed a part of the quay of New Orleans under a patent from the United States, issued on the confirmation of a grant by one of the French Governors of Louisiana, and sued the City who was in possession. The majority of the Court, Judges Porter and Matthews, gave a decision in favor of De Armas. Judge Martin dissented on the ground that the *locus in quo* was dedicated to the use of the public, and, therefore, could not be granted while that use continued. But, at the same time, he concurred with the other two Judges in denying that the City could claim any

title, on account of the use of the quay by the inhabitants in common.

We will quote a passage from the dissenting opinion of Judge Martin, which is decisive against the claim set up by the City of New Orleans to the property as its own, and equally conclusive against the pretensions of the City of San Jose in this case, on the ground of occupation for common use:

"The places of which a city or town has the exclusive property, and with which it may prevent any interference by other than its inhabitants, are those which it holds by letters patent, grants, purchase, exchange or donations, or those on which the inhabitants have a right of use.

"Of the first kind are the lots on which the town-houses, jails, and other buildings of this kind are erected; grounds on which the inhabitants have the right to pasture their cattle, to cut wood, dig for turf, and the like. It is of this kind of places that the law says the city or town cannot claim thereon any use without letters patent, or a grant or deed. In the absence of such a document, the public, *i. e.* inhabitants of the cities, towns, parishes, even strangers, cannot be prevented from using places within or near a town or city to which the inhabitants of the city or town may pretend they have an exclusive right.

"Of public places, the public may claim the use by exhibiting evidence of a dedication to its profit by the sovereign or *pater familias*, without any letters patent, grant or deed.

"Of places which are alleged to be the exclusive property of the town or city, or of which the exclusive right to use is claimed, letters patent, a grant or deed must be produced." 5 Louisiana, 157, 158.

Judge Porter comes to the same conclusion on page 187, 5 Louisiana; he says:

"By the laws of France, a city or town could not acquire right or title to the soil of immovables, *or to the use of them*, without letters patent from the King."

And again, on page 188: "If the laws of Spain could effect this case, I understand their provisions in relation to the rights of corporations to immovable property to be similar to

those of France. *By the 9th law of the 28th title of the 3d Partidas,* the definition given of common property in towns or cities is those public places, etc., which are '*establicidos e otorgados para pro communal de cada cibdad o villa,*' established and granted to be common to a city or town."

We have the authority of Governor Don Josè Figuèroa, a most enlightened man and jurist, to show that the commons of a Pueblo were not property, for in the circular communication of August the 6th, 1834, found in the archives of San Josè, he directs in article first, that the corporations "proceed "to solicit that there be laid out to each Pueblo, land for com- "mons and *property.*" He clearly distinguishes between commons and property; and making the distinction still more clear, he further directs in article second *that the land of property* be apportioned and rented or sold. Record pages 219 and 220.

The question whether Pueblos in California had any title to lands has been adjudicated upon *directly* by the United States Land Commissioners, and the Supreme Court of California, and it has been finally settled that they had none, not even to their *propios,* but only a power of administration over even them, subject to the control of the government in whom the title remained. In support of this, we cite the opinion of the United States Land Commissioners, in the case of the city of San Francisco *vs.* the United States, also two cases decided by the Supreme Court of California since the trial of this case below, namely Hart *vs.* Burnett, et al. 15 Cal. 530; Brown *vs.* San Francisco, 16 Cal. 451.

In the case of the city of San Francisco *vs.* The United States, the Commissioners confirm the claim of the city to the extent of four leagues, on the ground of a *presumption* of an assignment of land to that extent under the Spanish law. There was no grant as in this case.

The Commissioners say in their opinion in the case of the claim of the city of San Josè, that their confirmation of the claim to the extent of four leagues, (see their decree in the Record, page 95,) is based upon the same principles laid down in their opinion at length in the case of the city of San Francisco, to which reference is made for those principles. Their

intention being in each case to protect lot holders, under grants from the city authorities, in compliance with the fourteenth section of the Act of Congress, of March 3, 1851, and not to decide that the city herself had any title. They say in the case of the city of San Francisco, thus :

"The lands for propios seemed to be under the control of the municipal authorities for the purpose of raising funds for their support and other municipal purposes. The regulations generally prescribe the manner in which this should be done. In the plan of Pitic, the mode proposed seems to have been by cultivation, at the expense of the town; the profits being appropriated to the municipal expenses. In other cases they were allowed to dispose of them in "censo enfiteutico," as in the California regulations of 1834. The *egidos* or common lands stood on an entirely different footing; they were not regarded in any sense as the property of the corporation, but were set apart and assigned for the common use of the vecinos of the Pueblo. But whatever may have been the interest which the towns had in these lands, or the tenure by which they held them, it is certain they never had such a right of property in them as would enable them to alienate or dispose of them in any manner. But the right to grant house lots, or farm lots, and to dispose of *propios* by lease or enfiteutic rent was under authority, specially delegated by the Government for that purpose, and revocable at its pleasure. This is proved by all the laws, regulations and instructions, to which we have had access—all of which go to show, *that the right of property remained in the government, subject to the uses of the towns for the purposes and under the restrictions imposed by the laws and regulations.*"

In the above cited case of Hart *vs.* Burnett et al. (15 Cal.) the Supreme Court of California say, page 549 : "If Governors of California have granted lands within the general limits of Pueblos, it will be presumed, unless the contrary be shown, that such grants were made in accordance with the objects and uses for which such lands had been assigned and dedicated by the laws to the Pueblo. The whole matter was subject to the control and direction of the Governor and Territorial Deputation, and the official acts of such officers,

within the general scope of their powers, are presumed to have been done by lawful authority." United States *vs.* Perchman, 7 Peters, 95.

"So far as we have examined grants made by the different Governors within Pueblo limits, they seem to have been in conformity with such general object of building up a town by encouraging settlement and cultivation, and with the uses to which such lands had been dedicated. If the tract granted was of a larger size than that usually given for a building lot or for gardening purposes, the Governor generally first consulted the Ayuntamiento or Alcalde to ascertain whether there was any objection to the grant, or sent the grant to them for their action prior to its being delivered to the grantee. Moreover, the tracts so granted were usually at a considerable distance from the principal settlement, or upon the very outskirts of the Pueblo lands, and a special clause was generally introduced making the lands so granted subject to the regulations and tax or canon of the respective Pueblo."

In the case of Brown *vs.* San Francisco, 16 Cal. Rep. above mentioned, the plaintiff claimed, under a grant from the Governor of California, land which, it was admitted, was within the four leagues to be assigned to the Pueblo of San Francisco, and sued the city of San Francisco to quiet his title. The Supreme Court of California decided in his favor, and declared that the Governor could grant land within the acknowledged limits of the four leagues to a Pueblo, and denied that the Pueblo had a title to the land as its own. In the opinion, the Court says, on page 451, as follows: "We remarked in Hart *vs.* Burnett et al. (15 Cal. 549,) "If Governors have granted lands within the general limits of Pueblos, it will be presumed, unless the contrary be shown, that such grants were made in accordance with the objects and uses for which such lands had been assigned and dedicated by the laws to the Pueblos. The whole matter was subject to the control and direction of the Governor and Territorial Deputation, and the official acts of such officers, within the general scope of their powers, are presumed to have been done by lawful authority."

"The correctness of the general principles here announced is not disputed, but counsel for appellants have endeavored to destroy the force of this presumption by showing that this grant was not made by lawful authority, but in violation of positive law.

"In the first place, it is said that this land, being within the general limits of the Pueblo, the law of 1824 and the regulations of 1828 had no application, and gave no authority to make the grant; and that it is to be inferred that this grant was made only under the authority of that law and of those regulations, because no others are recited or referred to in the grant. On the contrary, it has been well settled, that a grant may be made under other and different authority than that recited in the grant, and that the grant may be valid, although the authority referred to in it may prohibit it being made." United States *vs.* Perchman, 7 Peters, 95.

"Nor does it by any means follow, that because a particular tract of land, or some portion of it, falls within the general limits of a Pueblo, this Pueblo has such a right or title to this land as to exempt it from the general operation of the granting powers of the Governor and Deputation. The whole course of our reasoning in Hart *vs.* Burnett et al. was opposed to this view of the character of Pueblo titles. It is unnecessary to repeat our arguments here."

The opinion of the Court concludes thus (pp. 460 and 461):

"We have, thus far, considered this question on the supposition that the power of the Governor and Deputation or Assembly to make grants, was derived solely from the law of 1824 and regulations of 1828. But as stated in Hart *vs.* Burnett et al. (15 Cal. 549,) we are of opinion that their authority over Pueblo lands existed prior to their date, and were not changed or repealed by them; and this opinion is not only sustained by the report of the Junta of Colonization of 1827, but is confirmed by the documentary evidence referred to by counsel in this case.

"In conclusion, we reaffirm the proposition announced in Hart *vs.* Burnett et al.

"The whole matter of granting lands, within Pueblo lim-

its, was subject to the control and direction of the Governor and Territorial Deputation; and the official acts of such officers within the general scope of their powers, are presumed to have been done by lawful authority.

"That the grant in this case was within the general scope of their powers, cannot, we think, be denied; and the evidence and authorities adduced, show that their act in making this grant was done by lawful authority.

"The decision of the Court below is therefore affirmed."

Recitals of the Patent.

The defendants below cannot make out a title in the Pueblo through the recital in the patent to Antonio Chaboya, under which the plaintiff below claimed.

The recital in question is the first one in the patent. "Whereas it appears from a duly authenticated transcript "filed in the general Land Office of the United States, that "pursuant to the provisions of the Act of Congress, approved "the third day of March, 1851, entitled, 'An Act to ascertain "and settle the private land claims in the State of California.' "Antonio Chaboya, as claimant, filed his petition on the 9th "day of March, 1852, with the Commissioners to ascertain "and settle the private land claims in the State of California, "sitting as a Board in the city of San Francisco; in which "petition he claimed the confirmation of his title to a tract "of land in the county of Santa Clara, known by the name "of Yerba Buena or Socayre, said claim being founded on "possession by permission of the municipal authorities of "San Josè Guadelupe, as recognized and decreed by Don "Josè Figueroa, Governor of California, on the 25th day of "November, 1833."

Then follow recitals that a decree of confirmation had been rendered in favor of the claimant by the Land Commissioners, which decree was, on appeal, affirmed by the District Court of the United States for the Northern District of California, and *the title of the claimant declared valid and confirmed,*

and that the decree of the latter tribunal had been made final by stipulation, and that the tract of land confirmed had been duly surveyed.

It is very apparent on reading the recital in question, that the muniment of title relied on by the patentee, Antonio Chaboya, in his petition to the Land Commissioners, was the decree of the 25th of November, 1833, by Don Josè Figueroa, Governor of California, in favor of Chaboya.

In this connection we will observe that there is a distinction to be made between Pueblo jurisdictions and the towns which were their "Cabezas," (seats of justice and jurisdiction.) The former being named after the latter, the two are frequently confounded.

In the opinion, in Hart *vs.* Burnett, 15 Cal., page 547 and 548. The Court says, "moreover, the persons entitled to "elect Ayuntamientos of Pueblos were not merely those "who actually resided within the limits of the lands which "pertained to such Pueblos. The alcaldes who were the "principal officers of the Ayuntamientos of Pueblos, some-"times exercised political and judicial authority over much "larger geographical districts, and the inhabitants of such "districts were entitled to vote at the primary elections "which were held to fill such offices. It is shown in official "documents that the alcaldes of San Josè at one time "exercised political and judicial jurisdiction over the Contra "Costa, and over the whole extent of country from the "Pulgas Rancho, to San Juan Bautista."

With this explanation we submit that the fact that the authorities of the municipality of San Josè permitted the possession of the land, affords no presumption of any thing more than that the lands were within their jurisdiction.

It is from Governor Figueroa, that the title recited emanated through the decree. If the authorities of San Josè did any thing in the matter, it was only as an inferior jurisdiction, obeying its superior, the paramount authority.

The title, therefore, was properly presented to the Land Commissioners. It did not come within the provisions of the 14th section of the Act of Congress of March 3rd, 1851. (See the section herein set forth on page 32.) Besides the question has been the subject of adjudication by the pro-

per tribunals as appears by the very recital of the patent and the title has been finally declared valid and confirmed.

It may be remarked in this connection that the claimant was not required by the Act of March 3d, 1851, to present any petition. *That was a surplusage.* It was "the right or title derived from the Spanish or Mexican authorities," which claimants were required to present. See sec. 8, Act of March 3, 1851.

It has been decided by the Supreme Court of California, in Mott *vs.* Smith, 16 Cal. 533; that the recitals of final confirmation of the title are conclusive. In that case the plaintiff claimed under a patent which recited that the claim was founded on what is known as the Sutter general title.

The Court says:

"Assuming then, that, as a matter of fact, the grant was issued by Sutter without authority, the answer to the objection taken on that ground is perfect; it has been decided otherwise by the tribunals established by the United States for the express purpose of ascertaining and determining the validity of grants claimed to have been issued to individuals by authority of the Mexican government. This particular grant those tribunals have passed upon and pronounced valid, entitling the claimant to a recognition and confirmation of his claim thereunder. The United States have their officers to take charge of their interests, and to conduct legal proceedings on their behalf before the tribunals of the country. The highest officer for that purpose in the Union, with supervision over proceedings in each District, is the Attorney General. The highest officer for a particular District, subject to such general supervision, is the District Attorney. Both of these officers have consented on behalf of the United States that the appeal from the judgment of the Land Commission affirming the validity of the grant to Gutieras, shall be dismissed, and upon such consent the U. S. District Court has acted, and dismissed the appeal then pending, and ordered that the claimant have leave to proceed upon the decree of the Commissioners as a final decree; and these matters also appear by the recitals of the patent. The validity of the grant is therefore the law of that case. It can never be

questioned again by the government, or by individuals claiming under the government, either collaterally, in an action of ejectment, or directly in any other form of proceeding. It is a closed question for all time."

See also opinions of the Supreme Court of California, in *Starke* vs. *Barrett*, on page 366, 15th Cal.; in *Yount* vs. *Howell*, on page 467, 14th Cal.; in *Biddle Boggs* vs. *Merced Mining Company*, on page 361, 14th Cal.; and in *Moore* vs. *Wilkinson*, page 487 and 488, 13th Cal.

Grant under the Act of March 3d, 1851.

The defendant cannot claim that this Act operated *propio vigore*, as a relinquishment on the part of the United States to the Pueblo of San Josè, as claimed in the fourth instruction asked for by the defendants below.

This has been settled since the trial of this case below, in Hart *vs.* Burnett et al., 15 California.

We quote from the opinion, page 574:

"This is the language of the fourteenth section — 'The provisions of this Act shall not extend to any town lot, farm lot or pasture lot held under a grant from any corporation or town to which land may have been granted for the establishment of a town by the Spanish or Mexican government, or the lawful authorities thereof, nor to any city or town or village lot, which city, town or village existed on the seventh day of July, 1846; but the claim for the same shall be presented by the corporate authorities of the said town; or where the land on which the said city, town or village was originally granted to an individual, the claim shall be presented by or in the name of such individual, and the fact of the existence of the said city, town or village on the said seventh of July, 1846, being duly proved, shall be *prima facie* evidence of a grant to such corporation, or to the individual under whom the said lot holders claim; and where any city, town or village shall be in existence at the time of passing this act, the claim for the land embraced within the

limits of the same may be made by the corporate authority of said city, town or village."

There are no apt or usual words of grant. No land is described either by general or particular description. The Act was drawn by able lawyers, who are not to be supposed to use language so inaptly as to attempt to create a grant by words implying a presumption of its pre-existence. The words do not import a grant. They have another and more natural meaning, and imply a different purpose. The *Senate Debates* show an express disclaimer of an intention to grant lands; and there was a rejection of the grant to the towns, when the proposition in the form of an amendment was directly made, after the bill was reported, and for the reason given by the Chairman of the Judiciary committee, Mr. Berrien, that it was not expedient to grant lands, and the bill did not so design.

Confirmation by the District Court.

The confirmation to the Mayor and City Council of San Josè, by the District Court, is proved in this case not to be final, (see Record, page 218,) and therefore amounts to nothing, for it may be reversed.

And even if it were a final decree, without a survey and patent, it would not avail the defendants against the perfect legal title produced by the plaintiff. See opinion in Waterman *vs.* Smith, on page 418, 13 Cal.; reaffirmed in Waterman *vs.* Samuels, 15 Cal. 123. This Court has so decided in the case of Mezes et al. *vs.* Greer, 24 Howard, page 268. The Court will recollect, that in that case, the plaintiff, claiming under a patent, sued in ejectment. The defendants claimed to hold under a finally confirmed Mexican grant. The confirmation and the grant were excluded by the Court below. This Court, in their opinion, on page 275, said: "The Court below refused to admit the testimony, not for its irrelevancy, but its incompetency, because the defendants, claiming under a merely equitable title, having neither survey nor patent,

were not in a condition to dispute in a court of law the correctness of the survey made by the public officer, or resist the plaintiff's perfect legal title."

"The fact, and the conclusion of the Court from it, are undoubtedly correct. It is well settled that both plaintiff and defendants must produce a strictly legal title, whether it be in fee or as lessee for years."

E. M. Stanton
Henry McCrea
Henry Wilkins
for Gustavus Orchard
Defendant in Error

"H. P. Hepburn of Counsel"